



**MARASHLIAN
& DONAHUE, PLLC**
THE *COMMLAW* GROUP

REGULATORY PRIMER: ENTERING THE U.S. TELECOMMUNICATIONS MARKET

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I. Introduction

Entering the telecommunications marketplace as a service provider is no small undertaking. Providers must be prepared to proceed through the federal and state licensing or authorization process, typically submitting applications with the Federal Communications Commission (“FCC”), state public utilities commissions (“state PUCs”) and state secretaries of state (“SoS”).

If authorization is sought in all U.S. states, or substantially all states, the cost of this process can be significant. However, through The *CommLaw* Group’s years of developing and nurturing close contacts with key members of state public utility commission staff, one of firm’s specialties is the ability to offer the firm’s clients the opportunity to rapidly and cost-effectively obtain the required licenses and to make the peripheral filings necessary to pursue whatever communications enterprise they desire. The *CommLaw* Group has over 25 years of experience preparing and filing registrations and applications for licenses, as well as tariffs, in every jurisdiction requiring such filings for ALL telecommunications service providers; a respected relationship with federal and state utility commission staffs nationwide; and a complete library of state and federal rules & regulations, along with sample applications and tariffs to meet virtually any client’s needs.

Typically, prepaid service providers, facilities-based long distance providers, resellers, competitive local exchange carriers (“CLECs”) and others are subject to regulation and must obtain such authorizations, each to varying degrees depending on the jurisdiction. Providers also must take into account a range of federal and state regulatory fees and assessments including Universal Service Fund (“USF”) contributions.

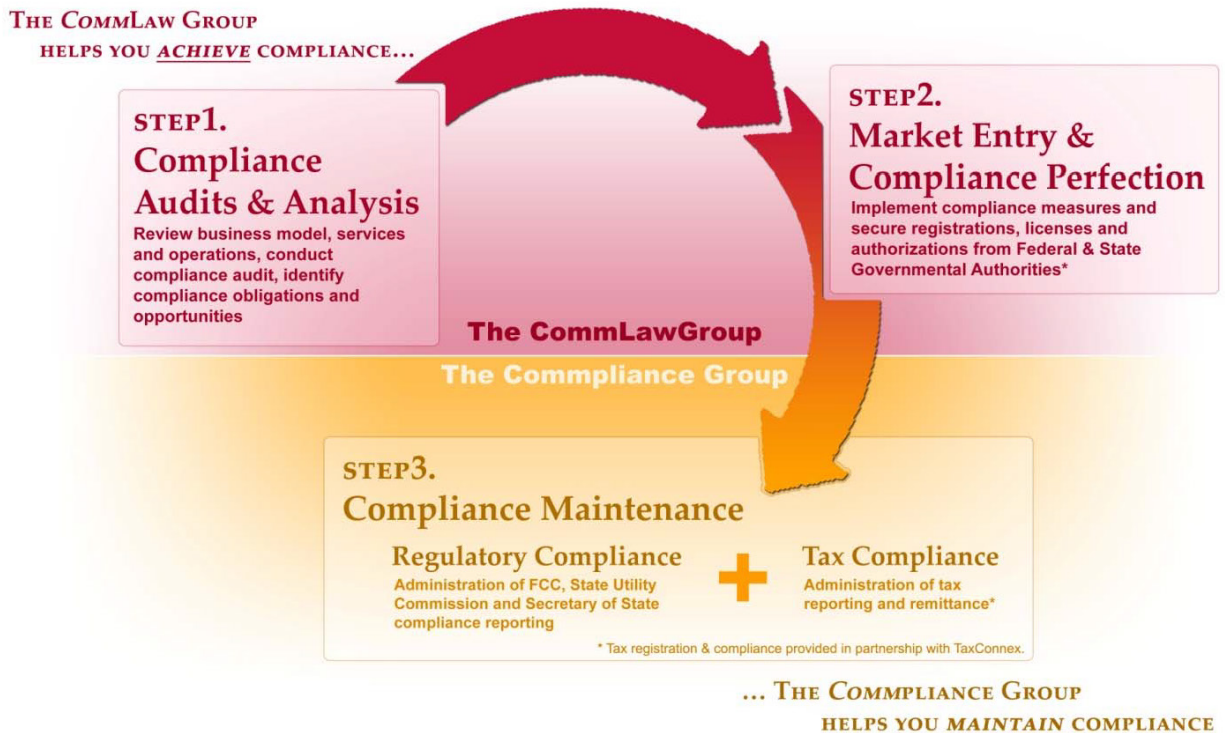
Our Firm’s comprehensive compliance methodology was developed with the recognition and understanding that carriers entering or operating in the communications services industry are confronted with a multitude of diverse compliance issues, both regulatory and taxation.

New entrants and even established businesses with less than ideal compliance records must achieve an acceptable level of regulatory and tax compliance. This entails pursuing governmental licenses, registrations and authorizations, identifying and correcting deficiencies, and taking other measures to ensure your company is well-positioned to maintain compliance in the future. Achieving a comfortable level of compliance often starts with an audit and analysis to determine the proper regulatory classification of your company’s business and services; in this day of technological convergence and regulatory uncertainty, knowing what services are provided and how those service are regulated and taxed by the respective governmental bodies is a critical first step.

But the responsibilities of regulated communications service providers do not end upon achieving compliance. Once obtained, compliance must be maintained through a seemingly endless array of administrative burdens, including reporting, filing and fee remittances for both regulatory and tax purposes.

Determining the scope of your company's compliance obligations, identifying lawful methods of mitigating compliance burdens and implementing compliance measures is one of the unique services available through The *Compliance* Group's close affiliation with its sister law firm, The *CommLaw* Group.

Once compliance is achieved, hand the reins to The *Compliance* Group where we'll provide a cost-effective, one-stop solution designed to meet all of your regulatory and tax compliance maintenance needs.



The following Primer summarizes the general steps of the entry process as well as ongoing compliance requirements and regulatory assessments and what our Firms can do to help your company achieve and maintain Compliance.

II. Does regulation apply?

Not all companies that provide telecommunications services are subject to the burdens of regulation. There are limited exceptions. Businesses that are considered to be private carriers, shared service providers or value-added providers – all very specific exceptions created under federal and/or state law – may be exempt from the regulatory process. Thus, the first question to put to your telecommunications attorney is whether your specific business model falls under one of these important exceptions. Notwithstanding this, virtually every provider of telecommunications service offered to the public for a fee will be subject to regulation.

III. Corporate matters

Once the corporation has been formed, consideration should be given to where telecommunications services will be provided. The state in which you choose to incorporate only confers authority to transact business in that state. A corporation wishing to serve customers in other states is considered a foreign corporation for those states and must obtain a separate authority to transact business in each such state.

While the details may differ, the general process of applying for authority to transact business is quite similar from state to state. As with the incorporation process (i.e., the articles of incorporation), applications for authority to transact business are usually filed with a state's secretary of state. This stands in contrast to telecommunications applications, which are usually filed with the state PUCs.

States usually will not review a telecommunications application unless a certificate of authority to transact business is attached to it. Therefore, obtaining authority to transact business for the states in which you wish to provide telecommunications service is a necessary first step that must be accomplished before the telecommunications application process begins. By accounting early on for the time and cost involved in obtaining these authorizations, you will minimize delays and ensure a smoother application process over the long term.

IV. Telecommunications licensing

Under federal and state law, telecommunications service providers are not allowed to commence providing service until they have been authorized to do so by either the FCC or applicable state PUC. Potentially severe penalties apply to companies that commence operations without prior authorization. Practically speaking, most telecommunications providers offer services that will be subject to licensing at both the FCC and state levels.

a. FCC licensing

A company seeking to offer: 1) international services originating or terminating in the United States; and/or 2) domestic U.S. interstate services such as calls originating in one state and terminating in another, is required to comply with the FCC's authorization requirements. These requirements are briefly summarized below.

FCC international authorization (Section 214): A company seeking to offer international services originating or terminating in the U.S. must first obtain FCC Section 214 authority to provide such services. Unless the applicant is affiliated with a foreign entity or other unusual issues arise, the application is usually acted on by the FCC in three to four weeks from date of submission.

FCC 499 registration: A company seeking to provide domestic U.S. interstate services, such as calls originating in one state and terminating in another, must first register to do so with the FCC. Registration is accomplished by filing a signed copy of FCC Form 499A, pages 1, 2, 3 and 8 with the Data Collection Agent at the Universal Service Administrative Corporation ("USAC"). Among other things, the form requires a company to list an agent for service of process in the District of Columbia and calls for a listing of states where the company either provides or anticipates providing intrastate service in the future.

The FCC Form 499A is particularly important. One reason is that the registering companies are added to the FCC's online, searchable database of registered companies. Under the FCC's rules, facilities-based carriers are only allowed to contract with resellers on the FCC registration list. Thus, failing to register will not only subject a company to potential FCC enforcement action, but could prevent it from being able to enter into agreements with underlying facilities-based carriers.

V. Price lists

The last step in the entry process on the federal side is the creation of a price list, which is a document that contains a company's rates, terms and conditions for international and interstate services. Prior to detariffing, the price list was termed a "tariff" and even today bears significant resemblance to a tariff. Under existing FCC rules, a service provider is required to post both its international and domestic rates, terms and conditions of service on its website, if it has one, and make such information available at its business office for public access.

VI. State certification

A telecommunications service provider seeking to offer intrastate services must obtain authorization, or certification as it is commonly called, from the PUC in the state in which it intends to provide service. An overview of the state authorization or certification process is provided below.

a. Applications/registrations

Most states require companies to seek authorization or certification to operate as a telecommunications carrier by submitting an application with the state's PUC or similar regulatory agency. In many instances, the application requests that the PUC issue a Certificate of Public Convenience and Necessity ("CPCN"), which is formal approval of the carrier's proposed operations and may be thought of essentially as a license to operate as a telecommunications provider in a given state.

Applications for certification can take many forms and vary in length and complexity. Some states require only the submission of short registration forms, while others require full petitions, with notarized affidavits, and the submission of tariffs.

b. Processing times

Applications for CPCNs can take anywhere from one month to one year to process by a state PUC, with an average processing time from the date of filing at about six weeks. Processing times vary depending on how elaborate a state's requirements and procedures are, the efficiency of the state PUC's staff – staff availability and workload – how well an application is prepared (i.e., mistakes slow processing times) and other factors, such as hearing requirements, which are discussed below.

c. Hearings and local counsel

As mentioned above, four states currently require hearings as part of the certification process, which can add significant delays in processing time. Hearings before state PUCs require a representative from the applicant's company to testify, either in person or, depending on the state, telephonically, about the company's managerial, technical and financial fitness to provide telecommunications services, as well as other related matters. Hearings typically last about an hour or two, but require preparation on the part of counsel and the witness to facilitate a favorable outcome.

d. Business considerations

An important issue that new telecommunications companies must consider is strategy in entering state markets. Some companies with access to sufficient start-up capital and/or nationwide marketing strategies choose to enter all 50 states, or a majority of them, simultaneously.

Other companies, however, have been very successful by initially entering only carefully selected states based on marketing considerations, market population (i.e., California and New York) or other specific factors and then focusing their efforts on gaining a strong presence in such states. A company should bear in mind that with each additional state in which it seeks to provide service, additional regulatory compliance obligations arise.

VII. Beyond entry

Successfully entering the market is only half the battle. Once a telecommunications provider has been authorized by the FCC or a state PUC to commence operations, it will face a range of ongoing FCC and state compliance requirements. Specifically, telecommunications providers holding an FCC Section 214 authorization or registered to provide domestic, interstate service will be subject to federal regulation, while providers offering intrastate service will be subject to regulation under state PUC laws in those states in which they are authorized to operate.

More importantly, a variety of federal and state regulatory assessments, including the USF assessment, will need to be paid. It is important that companies consider the impact of the USF and other regulatory assessments in their business planning. Although such assessments can appear significant, they typically can be passed along and recovered from end-users.

VIII. FCC fees and USF

The most important federal assessment a telecommunications provider will face is the mandatory contribution to the USF. USF fees underwrite telecommunications services for a number of different groups, including residents of rural areas, low-income consumers, rural health care providers, schools and libraries. USF contributions are calculated based on quarterly submissions of FCC Form 499-Q and annual submissions of FCC Form 499-A (due each April). Carriers are then billed and payment is required on a monthly basis. The contribution rate, which changes quarterly, has been above 12% in recent quarters.

In addition to a carrier's USF contribution, other federal regulatory assessments are likely to apply. These assessments will be used to fund the following: the North American Numbering Plan (NANP) allocates number resources; Local Number Portability (LNP) allows customers to keep their number when switching service providers; and Telecommunications Relay Services (TRS) provides telecommunications service to the hearing impaired. Finally, the FCC also generally requires the payment of annual regulatory fees by companies holding FCC authorizations. *De minimis* exceptions do apply.

IX. State fees and compliance

Most states require some sort of ongoing regulatory compliance similar to that at the federal level, most often via data requests and annual regulatory fees. Requirements vary by state. Some states also have their own state-level USF, independent of the federal USF. The annual contribution for state-level funds varies widely.

X. Secretary of state (corporate) requirements

For each state in which a company operates, it must obtain a foreign corporation authorization from the secretary of state, which triggers ongoing regulatory requirements. Such requirements include income and other reporting obligations and the payment, usually annually, of fees and taxes, as well as other possible requirements. Fees and taxes vary broadly from state to state and can be assessed based on a percentage of revenue earned, on the number of shares of issued stock or other criteria.

XI. Tax Registration

Anyone making sales of tangible personal property and services, including telephone services, is taxable in all states. Therefore, an integral part of becoming a telecommunications provider in each state is registering with the respective Tax Department, Revenue Cabinet or other taxation authority in the state. Upon registration, telecommunications providers are responsible for filing appropriate tax returns and making necessary payments for such taxes as sales, use, excise and a variety of telecommunications-specific taxes.

THE *COMPLIANCE* GROUP

Compliance & Reporting Services

To assist its clients with their regulatory responsibilities following certification, The *CommLaw* Group, through its consulting division, The *Compliance* Group, offers nationwide regulatory reporting support to meet all federal & state regulatory reporting obligations.

The FCC, state utility commissions and other state agencies require regulated telecommunications companies to file a vast number and variety of reports. Many of these reports are required annually, semi-annually and even monthly. Failure to pay attention to these reporting requirements can lead to fines, forced customer refunds and even revocation of your operating authority. Whether you need someone to prepare and file all your reports or simply need information to stay abreast of reporting requirements, The *CommLaw* Group will help your company remain in compliance with these myriad of complex and often burdensome requirements.

The following services are offered by The *Compliance* Group through its Compliance & Reporting Service (“C&R Service”):

- All scheduled monthly, quarterly, and annual reports mandated by the Federal Communications Commission for interstate telecommunications services, prepaid calling card services, and interconnected VoIP providers, including FCC Form 499-A, 499-Q, CPNI, CALEA reporting, PIU reports, Form 477, international traffic reports, and more.
- All scheduled monthly, quarterly, and annual reports mandated by state Public Utility Commissions for regulated local exchange, long distance, pre-paid and other in-state service providers. Examples of regulatory reports included in the C&R Service are: annual reports, revenue reports, access line reports, slamming complaint reports, regulatory fee filings, state telecommunications relay service funds and state universal service fund reports.
- All annual reports mandated by the Secretaries of States for purposes of maintaining corporate qualification to conduct business in each affected state.

Furthermore, through our trusted business affiliate relationship with TaxConnex, an experienced sales, use and transaction tax consulting and processing firm, we are able to offer our telecommunications services clients “Total Outsourced Regulatory Compliance” or TORC!

What does TORC mean for your company?

TOTAL OUTSOURCED REGULATORY COMPLIANCE

By the very nature of the borderless nature of their services, most regulated telecommunications companies provide services in multiple state & federal jurisdictions -- many even provide their services throughout the nation. Selling telecommunications services in numerous jurisdictions leads to three key areas of compliance:

- Compliance with Regulatory Commissions, such as the FCC and State Utility Commission;
- Compliance with Secretaries of State, to maintain corporate status; and
- Sales, Use and Transactional Tax compliance

Subscribing to our C&R Services will ensure your company satisfies the first two requirements listed above. And, through its relationship with TaxConnex, our firms work together to ensure Total Outsourced Regulatory Compliance with both regulatory fees and telecommunications taxes!

Together our Firms work to ensure that that no stone is left unturned—no regulatory or tax filing is left unfiled and no deadlines missed. With “TORC” your executives can sleep at night knowing that neither the Taxing or Regulatory authorities will be knocking on their doors because someone neglected to do their job!

To learn more about our Firm’s regulatory compliance consulting division and fixed-fee / usage- based post-licensing Compliance & Reporting Services, we invite you to visit The *Compliance* Group at www.ComplianceGroup.com.