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**SHUGHART THOMSON & KILROY'S TELECOMMUNICATIONS AND NEW  
TECHNOLOGIES PRACTICE GROUP TELECOM REPORT**

**FCC Clarifies its Rules Implementing the Telephone Consumer Protection Act of 1991**

On February 10, 2005, the FCC addressed certain issues concerning its rules that implement the Telephone Consumer Protection Act of 1991 ("TCPA"). The rules in question concern the National Do-Not-Call Registry and the FCC's related telemarketing rules.

Specifically, the Commission took the following action:

1. Clarified its rules to hold that telephone calls made for the purposes of debt collection do not require the identity of a caller's state registered name in a pre-recorded message if doing so will conflict with federal or state laws in accordance with the Fair Debt Collection Practices Act;
2. Clarified that bill messages incorporated in a common carrier's billing to subscribers satisfied the requirement for common carriers to provide an annual notice to subscribers of the opportunity to register with the National Do-Not-Call List;
3. Verified application of the "established business relationship" exemption such that the existence of financial contracts such as bank accounts, credit card accounts, loans and mortgages qualified companies for the "existing business relationship" exemption from the Do-Not-Call rules;
4. Refuse to grant further exemptions from the Do-Not-Call rules;
5. Refuse to reconsider the rules established in the National Do-Not-Call Registry;

6. Reaffirm that pre-recorded messages delivered by radio and television broadcast station are not covered by the ban on such messages, as long as the programming is provided free to consumers.

These new rules were issued by the FCC in a second Order on Reconsideration in Docket Number 02-278, and become effective thirty (30) days after publication of the clarifications in the Federal Register. The Order is expected to be released within the next several days.

#### **The FCC Reduces the Cost to Subscribers of Changing Long Distance Providers**

On February 10, 2005, the FCC adopted a Report and Order in which the FCC decided to reduce the cost to consumers of changing long distance providers. Currently, the charge to consumers for changing long distance providers is \$5.00. Under the FCC's new rules adopted in the Report and Order, the rates will change. Upon the effectiveness of the new rules, thirty (30) days after they are published in the Federal Register, the rate will be \$1.25 if the change is made electronically rather than manually. If a manual change is made by the carrier, the rate will increase slightly to \$5.50. Moreover, local exchange carriers, which receive the fees for switching a customer's pre-subscribed long distance carrier, can charge more if the carrier can document higher costs. Moreover, local exchange carriers that adopt these new rates are free from the expense of submitting detailed cost information to justify a higher rate. Thus, the rates of \$1.25 for changes made electronically, and \$5.50 for changes made manually, are "safe harbor" rates. Local exchange carriers can charge less than the "safe harbor" rates if they decide to do so.

When a subscriber changes both interstate and intrastate long distance providers at the same time, the charge for changing the interstate provider is cut in half, from \$1.25 to \$0.63 for an electronically processed change. The FCC has no authority to reduce the intrastate charge, which is set by the Public Utilities Commission of each state.

The FCC's purpose in reducing the cost to a subscriber for changing long distance carriers, is to create an incentive for long distance carriers to invest in electronic processing so that the fees charged by local exchange carriers won't deter customers from changing long distance providers. Local exchange carriers that do not have electronic systems capable of processing electronic orders will not be required to do so, if the investment isn't economically rational. Such carriers may continue to charge the "safe harbor" rate for manual changes. The FCC's Report and Orders reducing these charges should be released in the next few days.

**FCC Adopts New Rules Regarding Accuracy of Telephone Bills  
and to Reduce "Slamming" of Customers**

On February 10, 2005, the FCC Adopted a Report and Order in further notice of proposed rulemaking which the FCC concluded that mandatory minimum standards are needed to facilitate the exchange of customer account information between local exchange carriers and interexchange carriers. The FCC reached this conclusion because evidence demonstrating that information needed by carriers to execute customers' requests for changing carriers or services in a timely and efficient manner and to properly bill subscribers was not being consistent and provided by all local exchange carriers and all interexchange carriers.

Under the new rules, a local exchange carrier will be required to furnish customer account information to an interexchange carrier when:

1. The local exchange carrier has placed a new user on the interexchange carrier's network;
2. The local exchange carrier has removed an end user from the interexchange carrier's network;
3. An end user that is presubscribed to the interexchange carrier makes certain changes to his or her account information by his or her local exchange carrier;

4. The interexchange carrier's requested billing, name, and address ("BNA") information for an end user who has usage on the interexchange carrier's network but for whom the interexchange carrier does not have an existing account;
5. The local exchange carrier rejects an interexchange carrier initiated order to change a customer's presubscribed interexchange carrier ("PIC").

The FCC will require an interexchange carrier to supply customer account information to a local exchange carrier when an end user contacts the interexchange carrier directly either to select or to remove the interexchange carrier as his preferred interexchange carrier. The FCC will also require carriers to provide the required notifications promptly and without unreasonable delay.

Local exchange carriers and interexchange carriers can share the customer account information pursuant to state mandated data exchange requirements, privately negotiated agreements between carriers, or voluntarily established business rules, including the voluntary, industry-developed standards as the Customer Account Record Exchange ("CARE") process.

The FCC also requested comments on a proposed rulemaking on whether the FCC should extend these rules to situations which a subscriber changes local exchange carriers. In addition, the FCC requested comments on whether it should require all local exchange carriers to participate in the exchange of customer account information, and if so, what information local exchange providers should be required to furnish to each other.

When the Report and Order is released, we will provide you additional information as to the items included in the notice of proposed rulemaking, including the comment date, and the effective date of the new rules concerning sharing of customer account information.

## **FCC Takes Action to Replace Outdated Systems Intercarrier Payments in the Telecommunications Industry**

The FCC is taking action towards replacing the outmoded systems of intercarrier payments in the telecommunication industry with a uniform regime more suitable for competitive markets and new technologies.

As many of you know, the current intercarrier payment system relies on per-minute intercarrier payments that distinguish between different types of carriers and services, such as local exchange and long distance services, or wireless and wiring services, even though these differences are not necessarily related to the cost of providing service. Furthermore, the introduction of new technology such as internet telephony and bundled flat rated packages for long distance services have made these distinctions irrelevant.

Accordingly, the FCC developed a record in a notice of proposed rule making requesting industry comments on reclamation of the commission's current rules governing intercarrier payments. As a result of the record, the FCC has identified four suggested common approaches for new rules governing intercarrier compensation. These approaches are as follows:

1. Intercarrier compensation should encourage the development of efficient competition and the efficient use of an investment in telecommunications network.
2. Intercarrier compensation must preserve universal service of work, to ensure affordable rates for consumers living in rural and high-class areas.
3. Intercarrier compensation must be technologically and competitively neutral.

Because of the rapid changes in the telecommunications industry, including the introduction of new technology, intercarrier compensation rules must accommodate continuing change in the telecommunications marketplace, provide for regulatory certainty, and are encouraged technological advances.

4. Intercarrier compensation rules will require minimum regulatory intervention and enforcement consistent with the competitive deregulatory theme of the 1996 Telecommunications Act. Intercarrier compensation rules should encourage negotiating agreements between carriers as opposed to detailed rules and regulations governing such payments.

The FCC has received seven different comprehensive plans to reform the FCC's rules for intercarrier payments. The FCC is seeking comment on these seven plans, and they may be found in their entirety at the FCC's website at <http://www.fcc.gov/wcb/ppd/>. The actual links to plans can be found under heading "compensation reform".

The plans include a simple reduction in most per-minute termination rates over a specific period of time; conversion per-minute intercarrier compensation charges to capacity-based charges; per minute rates based on a carrier's imbedded cost; cost-based termination rates for geographic areas for all types of telecommunication traffic; connection based intercarrier charges; replacement of intercarrier charges with a bill-and-keep plan; and a reduction in intercarrier rate levels that were over a 5 year period.

If any of you wish further information on these plans, please let us know.

#### **FCC Proposes Additional Flexibility in the 900 MHz Spectrum Band**

The FCC has proposed amendments to part 90 of its rules, 47 C.F.R. Part 90, to facilitate more flexible use of 199 channels allocated to the Business and Industrial/Land Transportation Pools in the 896-901/935-940 MHz (the "900 MHz") bands. The FCC proposed amendments to part 90 address issues such as licensing, operational and technical issues, the appropriate band plan, the rights and obligations of incumbent site-based licensee and competitive bidding for new licenses in the 900 MHz band. The FCC also proposed that the available radio spectrum in the 900 MHz band be licensed using a geographic license scheme. Thus, the FCC proposed a license for channels in the 19 blocks in 10 contiguous channels each, and one block of 9 contiguous channels.

The FCC's proposed amendments would give new licensees in the 900 MHz band a flexibility to provide any fixed or mobile service which include commercial mobile radio services ("CMRS"). The FCC's proposed amendments closely follow the flexibility the FCC has given to private land mobile licensees in the 900 MHz band, when the FCC consolidated the business and industrial/land transportation license categories, to allow more 900 MHz licensees to be used for commercial services.

The FCC has also requested public comment on whether additional interference protection requirements are necessary between licensees in the 900 MHz band, recognizing that new rules should provide at least the same interference protection to incumbent 900 MHz licensees in the Business and Industrial/Land Transportation license categories as the FCC rules provide to incumbents 900 MHz/mobile radio licensees. The FCC is seeking comments on whether more protection should be built into its rules in order to minimize or eliminate the interference between users. Finally, the FCC included that, because of the changes it is proposing for the 900 MHz band, it will continue to maintain the current freeze on processing 900 MHz band license application. The FCC, however, will consider a request for waiver of the application fees by a case by case basis, and incumbent licensee should continue to be permitted to file modification applications for the existing 900 MHz band operation.

The FCC's report and order proposing the amendments to the rules is not yet public, but when it is released, we will advise you of the comment date. The comment date will be thirty (30) days after the FCC's Report proposing the amendments is published in the Federal Register. We anticipate that the comment date will be around March 18-20, 2005.

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Shughart Thomson & Kilroy, P.C.'s Telecommunications and New Technologies Practice Group has substantial experience in enforcement proceedings before the FCC, state regulatory agencies and in the federal and state Courts. We are available to assist you in such matters. Therefore, please do not hesitate to contact us if you have any questions about this Special Report, or recent FCC or state regulatory actions, or any of our services. You may reach us as follows:

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