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FCC Prioritizes Enforcing Transfer of Control and Foreign Ownership Rules

According to a settlement with the Federal Communications Commission (FCC) announced on October 20, 2022, Truphone Inc. repeatedly transferred control of its FCC licenses to unvetted foreign individuals and entities without oversight by the agency or the executive branch. After failing to disclose its Russian investors to the FCC, Truphone admitted that it violated the agency's rules and has agreed to fully divest certain investors and pay \$600,000 in civil penalties. Under the settlement, the company is also required to adopt compliance measures.

Transfer of Control Rules

Under Section 214 of the Communications Act and the FCC's rules, telecommunications carriers [must obtain approval](#) from the agency in order to transfer assets or corporate control during a merger or acquisition. Entities that provide U.S.-international telecommunications services must obtain FCC approval under [specific procedures](#) for international services. Once a U.S.-international carrier is authorized, it must also [seek approval](#) for any substantial transfer of control, assignment of its authorization, or assignment of regulated assets.

These rules enable the FCC to review licenses and authorizations for national security, law enforcement, foreign policy, and trade policy concerns. For example, the FCC is able to confirm compliance with the Office of Foreign Asset Control's (OFAC) Specially Designated Nationals and Blocked Persons List, as they did in this matter.

Foreign Ownership Rules

Authorized U.S.-international carriers also have obligations under the FCC's rules to notify or obtain approval from the FCC for their foreign affiliations. A [carrier](#) must notify the FCC 45 days *before* the consummation of an acquisition in either of the following cases:

- The authorized carrier acquires a controlling interest in a foreign carrier.
- A foreign carrier acquires a controlling interest in the authorized carrier.

There are limited circumstances in which an authorized carrier only needs to provide notification *after* the consummation of the deal:

- The FCC has already determined the foreign carrier lacks market power in the foreign end market.
- The foreign carrier owns no facilities in the foreign end market.
- The foreign carrier is authorized to operate in a World Trade Organization (WTO) member country and meets certain qualifications for dominant carriers under the FCC's rules.

Additionally, [U.S. cable landing operators](#) that are licensed to land or operate a submarine cable in a foreign market have similar obligations. Furthermore, authorized carriers and cable landing licensees are responsible for ensuring the continuing accuracy of their foreign affiliations.

Upon its review of transfers of control, the FCC can impose any conditions it deems necessary for the public interest, and can conduct an immediate revocation hearing if these rules are violated.

Truphone Settlement

After Russia invaded Ukraine in February 2022, the FCC initiated a review of existing licenses and authorizations for consistency with U.S. national security and law enforcement priorities (i.e., the Biden administration's sanctions on Russia). [In April](#), it issued a Notice of Apparent Liability to Truphone for failing to disclose its foreign affiliations.

The FCC announced [in October](#) that it had reached a settlement with Truphone in which Truphone admitted guilt for not obtaining FCC approval before foreign individuals or entities acquired more than 5% of the carrier. These unapproved acquisitions included a trust established for the benefit of a Russian family that had acquired a 22.8% interest in Truphone.

As a result, Truphone must now pay a \$600,000 civil penalty, conduct a review of its ownership structure to determine whether this structure warrants a referral to the executive branch, and create a plan for compliance with the FCC's ownership rules. Because it has exceeded foreign ownership limits without FCC approval, it must also divest the Russian family's shares along with the shares of two other foreign nationals. Additionally, Truphone must ensure no sanctioned individuals or entities have an interest in the company at any time.

Bottom Line

The FCC has put authorized carriers and licensees on notice that enforcing transfer of control and foreign ownership rules is a priority. In addition to examining FCC authorizations and licenses for Russian affiliations, the FCC has also [revoked the authority](#) of Chinese carriers to provide services in the United States. Authorized carriers and cable landing licensees require strategic counseling when approaching a transaction with a foreign individual or entity to ensure compliance with the FCC's rules.

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