

Cryptome

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Telecommunications Law

Steptoe's internationally recognized Telecommunications Group, based in the firm's Washington and London offices, advises on a broad range of telecommunications-related commercial, transactional, regulatory, and infrastructure matters, particularly those with an international dimension:

- Regulation
- Transactions
- Disputes
- Service Providers
- Equipment Suppliers
- Government and Public Telecom Operators
- Regulation
- Privatization

Our telecommunications lawyers have an in-depth understanding of the commercial and technological aspects of the telecommunications industry and continually monitor market developments in North America and Europe. We offer our clients pragmatic and sector-specific legal advice in order to successfully meet the challenges of today's rapidly developing international telecommunications industry.

The attorneys at Steptoe & Johnson LLP provide a full spectrum of telecommunications advice, regarding regulation, transactions, and disputes in a variety of sectors, including wireline and broadband, wireless, satellite, and Internet and e-commerce, as well as information technology. Our clients include service providers, equipment suppliers, electric utilities, and governments.

The full capabilities of our firm—with more than 500 attorneys in several offices—are available to support our telecommunications clients. Our attorneys focus on other aspects of technology law, including intellectual property litigation, patent and technology protection, copyright and content protection, trademark and identity protection, unfair competition, and life sciences. Our attorneys also provide the traditional legal support often needed by telecom companies: corporate, litigation, employment, tax, antitrust, international trade, and property.

Regulation

The Telecommunications Group maintains close contacts with regulators

Telecommunications Law

world-wide, including:

- US federal and state regulators, including the Federal Communications Commission (FCC) and the National Telecommunications and Information Administration (NTIA);
- The European Commission and European national regulators, including OFTEL (UK), ART (France), RegTP(Germany), AGCOM (Italy), CMT (Spain), OFCOM (Switzerland), ODTR (Ireland), and OPTA (Netherlands); and
- International regulators, including the International Telecommunication Union (ITU) and the World Trade Organization (WTO).

Transactions

Our Telecommunications Group advises on a variety of telecommunications transactional matters, involving a full range of corporate, tax, securities, intellectual property, antitrust, and related issues. We advise on mergers, acquisitions, and joint ventures of telecommunications companies, and on service agreements, equipment contracts, and other commercial contracts essential to the ordinary course of telecommunications business. Having established successful relationships with various investment banks and venture capital funds, we are also able to provide introductions to sources of financing, strategic partners, and content providers.

Disputes

In recent years, lawyers of our Telecommunications Group have represented telecommunications companies in major disputes before US and UK courts and regulators, as well as international tribunals. We also handle telecommunications arbitrations and other forms of alternative dispute resolution, and advise clients on strategies for avoiding litigation.

Our representative clients include major US and European telecommunications companies.

Equipment Suppliers

We represent equipment suppliers on a wide range of commercial and regulatory matters, including:

- Agreements for sale, lease, and sharing of switches and other equipment
- Distribution agreements
- Joint ventures and consortia with operators

Telecommunications Law

- Vendor financing
- Security interests in equipment
- Equipment certification standards as mandated by the Federal Communications Commission
- Energy efficiency standards, such as Energy Star, as mandated by the US Department of Energy and US Environmental Protection Agency

Service Providers

We advise both established and start-up service providers, including carriers, co-location providers, and other service providers, on a wide range of matters. Services commonly provided include:

- Obtaining individual licenses, blanket or class licenses, indirect access, and numbering allocations in North America, Europe, and other regions
- Acting in acquisitions or disposals of other telecom operators
- Drafting commercial service agreements
- Negotiating interconnection agreements
- Advising providers of voice telephony over packet switched networks
- Negotiating submarine cable capacity purchase agreements

Our London office has particular experience advising US carriers and other service providers on pan-European expansion.

Government and Public Telecommunications Operators

We advise governments, public telecommunications operators (PTOs), and others on various aspects of privatizations and public offerings. Our experience includes:

- Drafting appropriate regulatory legislation and concession agreements;
- Restructuring PTOs for privatization;
- Drafting prospectuses and information memoranda;
- Advising on commercial implications of licensing and regulatory regimes;

Telecommunications Law

- Structuring consortia to bid for strategic stakes;
- Performing due diligence; and
- Making financing and security arrangements.

Privatization

Steptoe advises clients investing in or purchasing government-owned telecommunications companies throughout the world on a broad range of corporate, tax, regulatory, securities, intellectual property, antitrust, and related issues that arise from such matters. We pride ourselves on our in-depth understanding of the commercial and technological aspects of the telecommunications industry. Our privatization team includes lawyers who collectively speak English, Spanish, Portuguese, French, German, Italian, Norwegian, Persian, and Russian.

Our experience in representing government regulators on privatization matters allows us to better serve our clients' interests. We have advised foreign governments and private entities on over 20 privatization matters in emerging markets in the past several years across the globe: Argentina, Chile, Colombia, the Dominican Republic, Mexico, Peru, Venezuela, Canada, Kenya, Tanzania, Zimbabwe, Australia, Hong Kong, Thailand, Russia, Kazakhstan, Latvia, and Poland.

Representative Matters

The following are examples of our experience by telecommunications sector:

Wireline and Broadband

- Obtaining the first international reseller license in the United Kingdom and more international facilities licenses in the first tranche of applications in the United Kingdom than any other firm;
- Representing a major telecommunications company on federal and state regulatory aspects of its proposed \$129 billion merger with another major telecommunications company;
- Representing a Midwestern telecommunications provider on regulatory aspects of its \$3 billion merger with IXC Communications;
- Representing a European telecommunications company in becoming the first foreign carrier to enter the US market for international services on a facilities-basis, and subsequently obtaining similar authorizations for numerous other foreign carriers;

Telecommunications Law

- Drafting regulatory legislation and concession agreements for public telecommunications operator (PTO) privatizations in Tanzania, Bolivia, Republic of Georgia, Czech Republic, and Gabon;
- Advising numerous clients on competition issues in US and European proceedings on telecommunications mergers and joint ventures;
- Obtaining individual licenses, indirect access, and numbering allocations throughout the European Union, Asia, and the Pacific;
- Representing a major telecommunications company on federal and state antitrust and regulatory aspects of proposed multi-billion-dollar mergers with other major telecommunications companies;
- Regulatory counsel for a major aircraft manufacturer for its new aeronautical and maritime broadband service venture;
- Advising clients on local competition issues under the Telecommunications Act of 1996, including interconnection, local loop unbundling, and broadband services;
- Advising clients on FCC proceedings concerning access charges, customer proprietary network information, universal funding mechanisms, and reasonableness of rates;
- Representing several major carriers in the FCC settlement rate and foreign carrier entry rulemakings;
- Advising clients in obtaining US cable landing licenses for providing undersea fiber optic broadband services; and
- Advising clients on class licenses and other services permitted by the European Union or local telecommunications legislation.

Wireless

- Representing bidders in US broadband fixed and mobile wireless auctions;
- Advising telecommunications manufacturers, carriers, and software companies regarding their compliance with the Americans with Disabilities Act;
- Counseling numerous wireless telecommunications companies and trade associations regarding the Communications Assistance for Law Enforcement Act;

Telecommunications Law

- Advising clients on and developing compliance programs for EU and US restrictions on processing and transferring personal data, including the Data Protection Act of 1998 and the Telecommunications Data Protection Directive, CLI/billing issues, and customer lists;
- Representing a leading PCS handset manufacturer on health issues, leading to a negotiated solution with the FCC;
- Representing wireless licensees before the FCC on spectrum-related matters, including allocating new spectrum and preserving existing spectrum allocations; and
- Obtaining experimental licenses for new technologies on behalf of various wireless equipment manufacturers.

Satellite

- Representing a global communications and electronic systems company for over a decade on all of its satellite regulatory matters, including obtaining the satellite system license and various other licenses for the Iridium system, counseling on global broadband satellite services (including numerous geostationary and non-geostationary space system applications), and advising in the negotiations of the WTO's Basic Telecom Services Agreement;
- Representing one of the two major satellite television companies in the United States for over a decade on numerous issues regarding Direct Broadcast Satellite (DBS) services and multi-channel programming, including matters relating to its satellite authorizations, spectrum auctions, program access, copyright licensing and broadcast retransmission, and service into the United States from Mexico and Canada;
- Representing a large US manufacturer of airplanes and satellites on obtaining authorizations for a new global broadband aeronautical and maritime mobile satellite service;
- Representing major telecommunications companies in obtaining direct access to the INTELSAT system through FCC, judicial, and legislative proceedings;
- Obtaining authorizations for a Brazilian telecommunications company to serve the United States via foreign-licensed satellites;

Telecommunications Law

- Obtaining numerous US service licenses for several broadband service providers;
- Advising on satellite licenses permitted by the European Union and local telecommunications legislation; and
- Representing clients on satellite issues before the International Telecommunication Union (ITU), including serving as US delegates to several recent ITU World Radio Conferences and to the first ITU First World Telecom Policy Forum.

Transactions

Step toe & Johnson LLP has an exceptionally broad range of transactional experience in virtually all areas of telecommunications:

Wireline and Broadband

- Acting for a major energy company on all aspects of the \$155 million acquisition of pan-European telecom operator Iaxis from its administrators, including advising on insolvency, commercial, and regulatory issues in Spain, Germany, Italy, Switzerland, France, Netherlands, Norway, the United Kingdom, and the United States;
- Representing a global communications service and solutions provider in acquiring the assets of a Shell Oil telecommunications subsidiary;
- Representing a major European airline in a proposed acquisition of a significant minority interest in a US telecommunications company;
- Representing a European telecommunications company in the privatization of the Russian Svyazinvest telecommunications holding company;
- Overseeing corporate restructuring of PTOs for privatization;
- Drafting prospectuses and information memoranda for PTO privatization and structuring of consortia to bid for strategic stakes in privatized PTO;
- Negotiating submarine cable capacity purchase agreements and interconnection agreements; and
- Advising investors and investment bankers on potential acquisitions and debt offerings of telecommunications companies.

Telecommunications Law

Wireless

- Representing non-US companies on investments in wireless licensees, including those subject to designated entity restrictions;
- Counseling the lead lender in developing a \$200 million bankruptcy remote, structured financing program for financing service providers' acquisition of telecommunications equipment around the world;
- Counseling the lead lender regarding a \$195 million secured credit facility for a paging infrastructure owner, operator, and service provider;
- Representing a global communications service and solutions provider in its acquisition of another company's wireless, satellite, and CLEC assets;
- Representing broadband fixed wireless carrier on preserving its spectrum rights to MMDS and ITFS bands;
- Advising telecommunications carriers and local utilities on antenna-lease agreements; and
- Representing equipment suppliers on a range of commercial matters including agreements for distribution, joint ventures with operators, switch-sharing and switch purchase, agencies, and services.

Satellite

- Representing a major satellite television company in connection with a proposed \$1.1 billion acquisition of substantially all of the assets of a direct broadcast satellite joint venture;
- Representing a global communications and electronic systems company on various transactional matters in connection with the \$5 billion Iridium satellite telecommunications joint venture;
- Representing a global communications service and solutions provider in a series of acquisitions, including several maritime and VSAT satellite business units;
- Representing a Brazilian telecommunications company and its majority shareholder in a \$250 million satellite joint venture with another telecommunications company;

Telecommunications Law

- Counseling a Canadian satellite company regarding a \$85 million secured credit facility for acquisition and working capital financing;
- Representing a global communications service and solutions provider (as an Inmarsat Signatory) in Inmarsat's privatization; and
- Counseling borrowers, lessors, and lessees regarding financing and leasing satellite capacity and transponders.

Disputes

Step toe & Johnson LLP has a strong background in telecommunications dispute representation:

Wireline and Broadband

- Representing clients in FCC enforcement proceedings involving compliance with the Federal Communications Act;
- Advising a major international carrier on expropriation matters in Eastern Europe, leading to the disputed assets' successful disposition;
- Representing a global communications service and solutions provider in government bid protest litigation regarding a mobile satellite services contract; and
- Representing a major telecommunications company in several class action suits regarding payphone service to prisoners.

Wireless

- Representing a prepaid wireless carrier in FCC complaint proceedings against an incumbent local exchange carrier; and
- Advising equipment manufacturers on interference considerations relating to Ultra Wide Band technologies.

Satellite

- Representing a global communications service and solutions provider in federal court and FCC proceedings challenging its right to obtain competitive access to the Inmarsat system; and
- Participating in various appellate proceedings defending FCC actions favorable to a global communications and electronic systems company.

Telecommunications Law

Privatization

Examples of privatization work that we have undertaken follow:

- Advising a European telecommunications company and its consortium in the proposed privatization of two telecommunications companies;
- Representing a European telecommunications company in a Russian telecommunications holding company's privatization;
- Advising a telecommunications agency during the privatization of Venezuela's telecommunications industry, particularly with respect to creating its regulatory system;
- Advising the Australian regulatory authorities on reforming telecom laws in anticipation of privatization efforts;
- Heading the Companies Law team on analyzing and recommending modernization of Tanzanian Companies Ordinance and bankruptcy law in anticipation of its privatization program;
- Counseling an Eastern European government in connection with creating its national privatization program;
- Counseling developers in connection with privatizing electric power generation in Colombia;
- Drafting prospectuses and information memoranda for consortia to bid for strategic investments in privatized PTO;
- Representing an international financing agency in connection with its project financing and investment fund lending activities in over 25 countries, including telecom projects in Poland (fiber optic and cable television) and other projects in Latin America; and
- Representing a global communications service and solutions provider in Inmarsat's privatization.

Noteworthy

- Ranked, *Chambers USA 2008-2009, America's Leading Business Lawyers*; Telecom, Broadcast & Satellite: Regulatory
- Recommended, *Legal 500 US 2007, 2009*; Telecoms and Broadcast: Regulatory

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Privacy & Data Security

Steptoe has been at the forefront of the developing legal and regulatory environment for the Internet and e-commerce in the United States and internationally. We represent leading financial services, telecommunications, technology, information services, and insurance firms on the wide array of issues relating to e-commerce regulatory matters, as well as on potential liability to customers and interaction with law enforcement and other government agencies. We continually monitor legal developments affecting client interests in various aspects of e-commerce, privacy, and security.

Security and Privacy

We advise financial institutions and other multinational companies on data protection, computer security, and privacy law, including obligations under the Gramm-Leach-Bliley Act, the Health Insurance Portability and Accountability Act, the Electronic Communications Privacy Act (ECPA), CAN-SPAM, the Fair Credit Reporting Act (FCRA), the Federal Trade Commission Act, Sarbanes-Oxley, and other federal and state laws.

We also regularly advise companies on applicable international laws, including European Union data retention and privacy directives. A significant part of the practice involves advising companies on how to minimize the risk of a data security breach or to respond in the event of a breach, and how to comply with applicable laws regarding breaches.

We also have extensive legal and technical experience in data encryption technology, an essential tool for reliable and confidential e-commerce, often advising credit card associations and issuers on the use of cryptography for commercial applications.

In addition, we advise numerous companies regarding law enforcement and intelligence access to communications and information under a variety of applicable laws, including Title III, ECPA, the Communications Act, the Stored Communications Act, the Foreign Intelligence Surveillance Act, FCRA, and the USA PATRIOT Act.

Electronic Banking

As technological advances have transformed banking operations and commerce, our attorneys have become experienced in electronic banking matters. We have handled certification authority and digital signature issues for several major financial institutions, including banks and credit card companies. We are well versed in electronic banking products, services, and delivery systems such as stored value cards, smart cards, digital cash, and PC-based online banking.

We have represented clients in matters involving stored value cards, multifactor authentication technologies, electronic fund transfers, financial data processing

Privacy & Data Security

systems, electronic banking and payment system issues, and system security, data encryption, and export control matters.

Noteworthy

- Ranked, *Chambers USA 2008, America's Leading Lawyers: Privacy & Data Security* (National)

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CALEA/Wiretap

Beginning in the late 1980s, new competition in the telecom market and divergent technologies challenged the basic eavesdropping methods law enforcement had employed for the past 75 years. Technological obstacles spurred various legal initiatives by law enforcement and national security interests to maintain and in some cases expand their intercept capabilities.

Most notable among these is the Communications Assistance for Law Enforcement Act of 1994 (CALEA). Less well known was a campaign to persuade the Federal Communications Commission (FCC) to condition licenses granted to telecommunications carriers, relying on the FCC's noted deference to the Executive Branch on law enforcement and national security matters.

In parallel with these developments, Steptoe & Johnson LLP created one of the nation's premier legal practices representing telecommunications and information technology companies, manufacturers and carriers alike with respect to the government's expanding demands for electronic surveillance capabilities and capacity.

Our CALEA attorneys regularly represent all sectors of the telecommunications and information technology industries on surveillance-related issues and appear on a regular basis before the key decision makers at the Department of Justice, including the FBI and the Bureau's CALEA Implementation Section (CIS) as well as its Telecommunications Contract and Audit Unit (TCAU), the National Security Agency, and other law enforcement and intelligence-related agencies. We also regularly appear for our clients at the FCC and, as necessary, in the federal courts on wiretap and surveillance matters.

In addition to advocacy in public venues, we have an extensive practice providing advice and counsel to carriers and manufacturers with respect to the developing complex legal and regulatory scheme in this area.

Team CALEA draws on other synergistic practice areas. The firm has one of the nation's preeminent encryption practices, which also requires extensive dealings with Justice and the FBI on export licenses. It is also strong in national infrastructure protection, where the FBI now plays a lead role.

Finally, the firm has a thriving communications practice representing carriers in a wide range of regulatory matters, transactions and disputes and regularly appearing before the FCC, Departments of State, Commerce, Justice, Treasury, and Defense, and the US Trade Representative, and internationally before the International Telecommunications Union, World Trade Organization, foreign governments, and international tribunals.

CALEA/Wiretap

Our 10 years of continuous efforts on behalf of the telecommunications industry on surveillance-related issues, and our team's prior experience in government, has given us an in-depth understanding of the law of electronic surveillance and an ability to predict the government's position on the key issues in this area including: the government's desired technical capabilities, national security goals, conflicting international legal regimes, expansion towards interception of packet data and IP-based systems and cost reimbursement issues.

Representative Matters

We have taken a leading role representing industry on the key issues being raised by law enforcement:

- Critically examined and opposed, when justified, law enforcement's campaign to expand the breadth of electronic surveillance capabilities and capacity at the expense of carriers, manufacturers, and their customers.
- Advised several telecommunications industry groups on the promulgation of CALEA safe harbor standards for electronic surveillance capability for wireline and wireless telephony (as well as SMRS, paging, and Mobile Satellite Service) and, when necessary, defended these standards before the FCC.
- Advised on FBI attempts to impose restrictions or conditions on Section 214 licenses of international carriers that would, if successful, block the handling of US call traffic from locations outside of the United States.
- Opposed FBI attempts to keep US carriers from cooperating with legitimate foreign law enforcement surveillance orders.
- Addressed intercept and surveillance requirements in the context of CFIUS (Committee on Foreign Investment in the United States) proceedings of the Department of the Treasury and FOCI (foreign ownership control or influence) at the Department of Defense.

Our representations have included advice on the application of CALEA to a wide variety of emerging technologies, including cable and cable modems, packet data, voice over IP (VoIP), and Internet services.

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E-Commerce/Internet

The Steptoe & Johnson LLP eTeam is a leading international technology legal group representing information technology, electronic commerce, financial services, telecommunications, and other technology-intensive companies on cutting-edge legal issues.

With an integrated team based in our Washington, DC, New York, London and Brussels offices, we bring to bear critical technology, regulatory, corporate, and litigation experience with tax, anti-trust, and other capabilities, to ensure efficient, cost-effective representation. The specific experience of the eTeam includes:

General Internet Regulation

- **Data Protection / Privacy:** US Gramm-Leach Bliley Act, Health Insurance Portability and Accountability Act, Children's Online Privacy Protection Act and CAN-SPAM Act; EU Data Protection and Privacy and Electronic Communications Directives (including EU-US Safe Harbor); identity theft
- **Content:** Copyrighted content (music, video, etc.) regulation and liability; US Digital Millennium Copyright Act; child pornography regulation
- **Trade Regulation:** US and European state and national regulation of Internet business practices (including by US Federal Trade Commission); consumer rights
- **Internet Gambling:** regulation; payment mechanisms; financing
- **Monitoring:** continual monitoring of e-commerce law developments in United States, European Union, and elsewhere; publication of *Electronic Commerce Law Week* since 1998

Law Enforcement and Related Regulation

- **US Communications Assistance for Law Enforcement Act (CALEA):** Federal Communications Commission regulation; negotiations with Federal Bureau of Investigation, Justice Department and other agencies; application to emerging technologies, including VoIP telephony and broadband services; various other compliance issues

E-Commerce/Internet

- **Law Enforcement Orders and Requests:** US Title III, Electronic Communications Privacy Act and USA PATRIOT Act; UK Regulation of Investigatory Powers Act; subpoenas; co-operation with law enforcement; establishment of internal procedures for handling surveillance requests; counseling on compliance with court orders
- **EU Data Retention:** EU Data Retention Directive; EU member state legislation; interaction with data protection law
- **Computer Crime:** security breach issues; US Computer Fraud and Abuse Act

Information Security

- **Encryption:** global regulation of export, import and use of encryption, including by the United States, China, France, Russia and other countries; formulation of global distribution strategies for providers of encryption software and hardware; advice to financial services companies on use of cryptography for financial applications
- **Encryption Guide:** *Country-by-Country Guide to Encryption Regulations*, providing regularly updated reports on encryption export, import and use regulation in approximately 100 countries
- **Public Key Infrastructure (PKI):** advising PKI users on implementation in various industries, including financial services, healthcare, and oil and gas; advising vendors of PKI solutions
- **Security Breaches:** compliance and liability issues associated with security breaches and possible resulting identity theft; compliance with US federal and state laws and regulations on information security standards (including for financial services) and notification of breaches to consumers

Transactions and Agreements

- **Mergers & Acquisitions:** public and private company transactions; fundraising and other financing transactions
- **Outsourcing:** deal structuring, employee issues and contract negotiation for common transactions (*e.g.* computer systems/support) and specialized transactions; risk management; contract re-negotiation, dispute resolution and exit strategies

E-Commerce/Internet

- **Internet Terms & Conditions:** website terms of use; privacy policies; compliance with US and EU legal obligations
- **Software Licensing:** licenses for patented and unpatented technologies; technology transfers; end-user license agreements; distribution agreements
- **Services & Equipment:** broad range of agreements for IT and telecommunications services and infrastructure

Transborder Issues

- **Jurisdictional Conflicts:** conflicting obligations in different jurisdictions applying to the same conduct; differing rules on restricted content; conflicts between US Sarbanes-Oxley Act and EU data protection law; impact of USA PATRIOT Act on Canada-US cross-border matters
- **Committee on Foreign Investment in the US (CFIUS):** assistance to US and foreign clients with review of foreign investments in the US by CFIUS, pursuant to the Exon-Florio Amendment; notification requirements; dealings with CFIUS and individual government agencies involved in CFIUS process
- **Taxation:** taxation and tax structuring issues associated with international technology businesses
- **International Negotiations:** participation in international discussions and negotiations affecting electronic commerce, including WTO services negotiations, Council of Europe Cybercrime Treaty, various UNCITRAL instruments, and others

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Encryption

We believe that we have the world's leading encryption regulation practice. We have extensive experience in encryption export and import licensing matters in the United States, France, China, Russia, Hong Kong, and other countries.

Our web-based *Country-by-Country Guide to Encryption Regulations* is the leading resource on global encryption import, use and export controls, covering approximately 100 countries. We also counsel both developers and users of encryption products on global licensing and distribution strategies.

We also have one of the broadest and most sophisticated public key infrastructure (PKI) practices of any law firm, and are among a very small number of law firms worldwide that regularly practice in this area.

We have advised clients on developing and implementing industry PKIs in the insurance, mortgage finance, healthcare, financial services, and natural resources industries. We have advised many clients on developing and implementing enterprise PKI solutions and other secure business solutions that incorporate PKI technology.

We represent both commercial users of PKI technology and vendors of PKI technology solutions.