



January 2010

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FCPA Enforcement in the Telecommunication Industry

In 2009 the Department of Justice (DOJ) and Securities and Exchange Commission (SEC) resolved 35 Foreign Corrupt Practices Act (FCPA) enforcement actions. Eighteen companies criminally or civilly settled FCPA enforcement actions, while 17 individuals pled guilty, were convicted at trial, or resolved their matters civilly. Of these, four cases had a nexus to the telecommunications industry – more about that below. 2009 may be in the books but the reverberations caused by the DOJ's and SEC's enforcement of the FCPA, particularly those involving the telecommunications industry, will likely continue for years.

Given the DOJ's and SEC's inclination toward industry-wide investigations (e.g., pharmaceutical, medical device, and oil and gas), FCPA practitioners believe that the telecommunications industry is squarely within the government's crosshairs. Industry-wide investigations allow the government to benefit from an expedited learning curve. Once the government understands how an industry operates – and is most likely to be involved in FCPA violations – it can more efficiently marshal its resources and utilize that knowledge to target the next defendant within that industry, thus lowering its learning curve and the time it takes to put together a complete case for prosecution.

In the last several years the telecommunications industry has slowly captured the DOJ's and SEC's attention. In 2007 Lucent Technologies Inc., a

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telecommunications network systems provider, resolved allegations of FCPA violations and paid US\$2.5 million in combined penalties to the DOJ and SEC. In 2008 several former executives of ITXC Corporation, a telecommunications provider, pled guilty to conspiring to violate the FCPA. Also in 2008 Siemens resolved allegations of FCPA violations that, in part, concerned misconduct by Siemens Bangladesh Limited regarding the creation and operation of a mobile telephone network. As part of the matter's resolution, Siemens paid a combined US\$800 million to the DOJ and SEC. Finally, in 2009 Latin Node, Inc., Juan Diaz, Antonio Perez and UTStarcom Inc. all resolved allegations of FCPA violations with US enforcement authorities.

In addition to those cases that have settled, in 2009 the DOJ charged several individuals working in the telecommunications industry with violating the FCPA and related crimes. Finally, many telecommunications companies have publicly announced that they find themselves among the 140 FCPA investigations actively being pursued by the government.

The best way for companies to avoid FCPA-induced headaches is to implement, train, enforce and audit a robust and proactive FCPA compliance plan. Such a plan includes procedures that:

- instruct company personnel concerned regarding the principles and provisions of the FCPA;
- train for the appropriate response to circumstances where bribes may be solicited or thought to be "necessary"; and
- illustrate what can happen when the statute is violated.

Effective compliance plans must be designed to detect and prevent illegal activity – preferably before the government does. This requires effective due diligence when engaging third parties (such as sales agents, consultants and distributors) or undertaking new business ventures (e.g., mergers, acquisitions or joint ventures) and the incorporation of FCPA compliance language and audit rights in such agreements.

Lawyers in Squire Sanders' global anticorruption and white collar practices regularly counsel clients on FCPA compliance, training and enforcement issues. If you have any questions about FCPA issues, please contact one of the individuals listed in this Alert.

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2010

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