



**ZAG/S&W LLP TELECOMMUNICATIONS ADVISORY**

## 2009 Year-End Regulatory Housekeeping

With the new year just a couple of weeks away, now is the perfect time for Sullivan & Worcester telecommunications clients to focus on reviewing their checklists of regulatory compliance items. A check-up is particularly advisable given the scope and severity of penalties that the FCC has issued for non-compliance this year, continuing a trend of escalating enforcement activity and monetary forfeitures.

Maintaining compliance is a year-round job, and each company has unique responsibilities and requirements that we provide counsel on throughout the year. The list below is not intended to incorporate all of these requirements or to provide legal advice – it is a courtesy snapshot of some of the most common and broadly-applicable compliance items that might require the attention of our clients, particularly telecom and interconnected VoIP providers, MVPDs, and ISPs. The responsibilities of each business varies based on the particulars of their business operations, and we encourage our clients to maintain a regular dialogue with us concerning compliance matters. Our decades of experience in representing clients before local, state, and federal regulators, and providing regulatory advice, places us in a unique position to provide the peace of mind that everything has been handled. We are just a phone call or e-mail away, and we highly encourage all of you to let us know if we can be of any assistance.

Thank you for your business in 2009, and we look forward to working with you in 2010. Happy Holidays and best wishes to you and your families.

- **FCC COMPLIANCE REPORTS** – Confirm that all applicable FCC compliance reports have been filed. Many (but not all) of the required reporting forms can be found on the [FCC's Web site](#).

Examples of reports you may need to file include:

- Local Telephone Competition and Broadband Report
- International Circuit Status/Addition Report
- International Traffic/Revenue Report
- Common Carrier Employment Report
- MVPD EEO Program Annual Report
- Numbering Resource Utilization/Forecast Report

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- **REGULATORY FEES** – Confirm that all applicable FCC regulatory fees were filed and paid: <http://www.fcc.gov/fees/regfees.html>. Please note that this is an area that requires particular attention to detail, as it has been a source of confusion and steep fines. The FCC collects twenty-five percent (25%) late fees for late payment of regulatory fees – penalties that can reach into the millions. It is vital for companies to calculate the proper total for their fees, and submit timely payment via the Commission's online "[Fee Filer](#)" system. This year's deadline was September 22, 2009, but the deadline varies each year, and it is each company's responsibility to seek out the deadline and pay on time.
  - **CORES** – Many forms require an FCC Registration Number, obtained through [CORES](#). It is important to periodically review your CORES registration information and ensure that it is up-to-date.
  - **CALEA** – Telecommunications carriers, facilities-based broadband Internet access providers, and interconnected VoIP providers, must maintain up-to-date System Security and Integrity (SSI) plans with the FCC. Review your plan and file any updates (such as current contact information) as needed.
  - **CPNI** - Telecommunications carriers and interconnected VoIP providers must comply with strict rules for the protection of Customer Proprietary Network Information (CPNI). Providers should determine whether their required CPNI Certification to the FCC was timely filed in March, whether current customer authentication procedures and staff training are adequate, whether online account access remains compliant and secure, and whether appropriate opt-in or opt-out procedures are in place for use of CPNI for marketing purposes. In particular, we recommend periodic review of your vendor contracts for compliance with the CPNI rules. Be aware that the next annual filing deadline is March 1, 2010.
  - **WEB SITE AUDIT** - Review account access procedures and Web site Privacy Policies for compliance with FCC and FTC privacy requirements and, if applicable, CPNI rules. If terms of service are listed, review terms, conditions and rates, as well as any tariffs, and update as needed. If you maintain an interactive blog, review and update your blog disclaimers. We also recommend that you review your company's policies for use of social networking sites, such as Facebook and Twitter, for compliance with privacy rules.
  - **FTC RED FLAG RULES** – Telecommunications companies that provide services to individual or residential customers on credit and maintain customer accounts should review their Identity Theft Prevention Program to ensure compliance with the requirements of the Federal Trade Commission. The Plans should be reviewed to ensure that the listed contacts are up-to-date, mandatory staff training has occurred, and outside service providers are being appropriately monitored.
  - **TELEMARKETING, "ROBOCALLS" AND "DO-NOT-CALL"** – The FTC this year tightened restrictions on pre-recorded "robocalls," prohibiting most such calls unless the consumer has consented to receive them. The FCC and FTC telemarketing sales and "do-not-call" rules continue to be an area of significant enforcement activity. We recommend that all providers review their telemarketing practices to ensure compliance.
  - **OTHER PRIVACY & DATA SECURITY MATTERS** – Privacy and data security issues continue to grow in importance and scope for our clients and others. With healthcare data breach rules recently announced by HHS and the FTC, data broker legislation recently having passed the House of Representatives, and review of privacy concerns ongoing at the FTC, we predict 2010 will bring significant new privacy regulation. In October, S&W launched a dynamic new Privacy & Data Security practice group to bring the firm's Telecom Group together with attorneys from the corporate, IP, employment, litigation and tax practices to provide all of the firm's clients experienced advice regarding a wide variety of issues including:
    - Privacy of Consumer Information and Compliant Marketing Practices
    - Privacy of Healthcare Information
    - Privacy of Financial Information
    - Workplace Privacy
    - Breach Management and Litigation
- Clients should continue to become familiar with the growing number of legal requirements and responsibilities in this area. We urge everyone to review the [S&W Privacy & Data Security practice description](#) and, if you haven't already, to have a discussion with an S&W attorney about any

potential liabilities that your company may be exposed to both now and in the future.

- **USF** – Conduct a year-end review of Universal Service Fund compliance, as applicable:
  - Confirm that you are in possession of up-to-date 2009 reseller exemption certificates and contributor status FCC Web site print-outs for all carrier customers
  - Confirm that you are up-to-date on all USF contribution payments
  - Confirm that all Form 499-As and Qs, and Form 473 (SPAC), have been filed
  - Confirm that no further amendments are needed to your 2009 Form 499-A (reporting historical revenue for 2008)
  - Review an example end-user invoice to confirm that any USF contribution charges are reflected correctly (% correct, charged on correct revenues, etc.), and labeled and described to end-users in compliance with the FCC's regulations
- **COPYRIGHT ROYALTIES FOR INTERNET STREAMING** – Those engaged in webcasting should ensure that their royalty fees have been timely and accurately submitted to SoundExchange.
- **TRS, NANPA AND LNP CONTRIBUTION PAYMENTS**
  - Review payment status and confirm that you are up-to-date on all required contributions.

December 22, 2009