

Negotiable Hostilities: Doing Telecom Deals with Russia in the Sanctions Era

**CONTINUING LEGAL EDUCATION
THOMSON REUTERS**

**Sapronov & Associates, P.C.
5555 Glenridge Connector, Suite 200
Atlanta, Georgia 30342
www.wstelecomlaw.com
(770) 399-9100**



Negotiable Hostilities: Doing Telecom Deals with Russia in the Sanctions Era

2

- Introduction
- Foreign Ownership Restrictions
- State / Local Restrictions
- Statutory Restrictions on Foreign Investment
- Cross-border Financing Regulation
- Navigating Foreign Investment Deals
- Round Table Discussion

INTRODUCTION

- Overview: Foreign Ownership Restrictions on U.S. Wireless & Telecom Infrastructure
 - ▣ Federal, state and local regulation
 - Federal Telecommunications Act (47 U.S.C.)
 - Federal Communications Commission (FCC)
 - Entry/Exit Regulation 47 USC 214 (“International 214”)
 - Wireless Licensing/Control Transfer (“Title III”)
 - Submarine Cable Landing rights
 - State public utility commission rate/entry/financing regulation
 - Municipal cable and telecom franchise regulation, zoning authority

INTRODUCTION (*Cont.*)

4

- Overview: Foreign Ownership Restrictions on U.S. Wireless & Telecom Infrastructure (*Cont.*)
 - Unregulated: broadband internet access - (for now)
 - FCC Partially upheld by D.C. Circuit Court of Appeals, Mozilla Corp. v. FCC & USA, No. 18-1051 (D.C. Cir.)
 - (Petition for En Banc Review Pending)
 - Obama-era Open Internet (“Net Neutrality”) Rules dismantled by Republican controlled FCC(*)
 - Unsettled: pole attachments / state net neutrality laws /satellite “C Band”

(*) See Overview of the Restoring Internet Freedom Order, Feb. 5, 2018, Thomson Reuters Podcast, Available at http://westlegaledcenter.com/program_guide/course_detail.jsf?videoCourseId=100204569&ADMIN_PREVIEW=true

Foreign Ownership Restrictions

5

- Foreign ownership restrictions
 - Expanded Section 214 scrutiny on foreign ownership (landline/wireless) - “Team Telecom” Multi-agency review (FCC, Department of Justice, Department of Homeland Security, FBI)
 - Statutory caps on foreign wireless spectrum ownership 47 U.S.C. §310(d)
 - No more than 20% direct
 - No more than 25% indirect if FCC refuses based on public interest

State / Local Restrictions

6

- ❑ State / Local Restrictions
 - ❑ Entry regulation (foreign or otherwise) largely preempted
 - ❑ But “police powers,” local rights-of-way authority, finance regulations vary by state
 - ❑ State Attorneys’ General have Clayton Act merger enforcement authority (*e.g.*, T-Mobile / Sprint litigation)
 - ❑ But economic investment – (foreign or otherwise) especially in rural areas – often encouraged.

Statutory Restrictions on Foreign Investment

7

- ❑ Expanded investment scrutiny on foreign investment under statutory amendments to CFIUS (FIRRMA regulations)
- ❑ Foreign Agency Registration Act (FARA)
- ❑ Implications for Russian investment transactions (Discussion)

Cross-border Financing Regulations

8

- ❑ Sanctions and counter-sanctions
- ❑ Cross-border money transfer regulations
 - ❑ Financial Crimes Enforcement Network (FINCEN)
 - ❑ Money transmitter laws under U.S. state laws and foreign jurisdictions
- ❑ Know Your Customer (KYC) regulations
- ❑ Other

Cross-border Financing Regulations (*Cont.*)

9

- EU Sanctions
 - ▣ Brief historical overview
 - ▣ Special Focus:
 - Synopsis
 - Diplomatic Measures
 - Restrictive measures (asset freezes and visa bans)
 - Restrictions for Crimea and Sevastopol
 - Measures targeting sectoral cooperation and exchanges with Russia (“economic” sanctions)
 - Measures concerning economic cooperation
 - ▣ Update and extension

Cross-border Financing Regulations (*Cont.*)

10

- Russian Counter-Sanctions: How Do These Impact Telecoms Market?
- Inbound Investments:
 - Restrictions on foreign investment:
 - Foreign Investments Law 160-FZ, dated July 9, 1999 (as amended)
 - Strategic Investments Law 57-FZ, dated April 29, 2008 (as amended)
 - Safety of Critical Information Infrastructure Law No 187-FZ, dated July 26, 2017

Cross-border Financing Regulations (*Cont.*)

11

- Russian Counter-Sanctions: How Do These Impact Telecoms Market (*Cont.*)?
- Counter-Sanctions:
 - Federal Law “On counter-measures in respect of unfriendly acts of the United States of America and other foreign states” 127-FZ, dated June 4, 2018
 - Federal Law On Special Economic Measures and Enforcement Measures 281-FZ, dated December 30, 2006
- Information Disclosure (Exemptions)

Navigating Foreign Investment Deals

What is Permitted; What is Not

12

- ❑ Reducing U.S. Telecom Regulatory Risk
 - ❑ Private carrier exception to entry regulation
 - ❑ Avoid 214 entry regulation
 - ❑ Regulatory control transfer avoidance
 - ❑ (Exercise upon default only)

Navigating Foreign Investment Deals

What is Permitted; What is Not (*Cont.*)

13

- Spectrum financing
 - ▣ “LicenseCo” Structure
 - ▣ Use Special Purpose /Bankruptcy Remote Entity

- Security Interests/Investment protection
 - License proceeds only
 - Subordination / Inter-creditor agreements

Navigating Foreign Investment Deals

What is Permitted; What is Not (*Cont.*)

14

- Due diligence / Dealing with U.S. Regulators
- Deal Protection - Foreign / Russian investor perspective
 - Russian investor perspective in the U.S.

Round Table Discussion

15

- ❑ Opportunities in U.S. Wireless / telecom assets - how attractive?
 - ❑ “5-G” rollout / rural markets /FCC low interest rates /real property (data centers) /distressed assets
 - ❑ Worth the risk?
- ❑ Geopolitical outlook
 - ❑ Impact of U.S. 2020 election
 - ❑ Would Republican or Democratic control be better for Russian investors?
- ❑ Key takeaways

Walt Saprnov



16

770.399.9100
wsaprnov@wstelecomlaw.com



Walt Saprnov has represented corporate clients in telecom transactions, regulation and privacy for over thirty years. He has been named in Georgia Super Lawyers and in the International Who's Who of Telecom Lawyers. Together with his Firm, Saprnov & Associates, P.C., he has negotiated commercial telecom contracts with every major telecom carrier in the U.S. and with many abroad. The Firm also supports clients in privacy compliance before the FCC, the FTC, EU and state regulatory agencies. Mr. Saprnov is a frequent conference speaker and has authored numerous publications on telecommunications law.

For more information, please visit:
www.wstelecomlaw.com

Paul Kouroupas



17

For over twenty years, Mr. Kouroupas has represented a variety of companies in telecommunications and energy/transportation before local, state, federal, and international regulators. Mr. Kouroupas has successfully prosecuted hundreds of State, federal, and international regulatory proceedings with a direct impact on corporate financial and operational performance, served as an expert witness in over 30 state regulatory proceedings, testified before numerous state legislatures, and spoken at industry conferences around the world. While at Global Crossing, Mr. Kouroupas obtained CFIUS approval for multiple transactions and served as Security Officer under Global Crossing's Network Security Agreement.



pkouroupas@wstelecomlaw.com
770.399.9100

Daniel B. Pickard



18

202.719.7285
dpickard@wileyrein.com



Dan counsels U.S. and international clients on the laws and regulations governing international trade, with particular emphasis on import remedy, anti-bribery, national security, and export control issues. He represents and advises clients in matters related to trade remedy investigations (including antidumping, countervailing duty, and safeguard cases), U.S. economic sanctions, export controls, anti-boycott measures, and the Foreign Corrupt Practices Act (FCPA). Dan provides comprehensive international trade law compliance guidance, including assessing and resolving sensitive national security matters; developing corporate compliance programs; establishing compliance with the National Industrial Security Program (NISP) and mitigating Foreign Ownership, Control, or Influence (FOCI) issues; conducting internal investigations relating to potential violations; and appearing before the relevant agencies in connection with investigations, licensing, and enforcement actions. He also teams with the firm's Election Law & Government Ethics Group to provide guidance pertaining to the Foreign Agents Registration Act (FARA).

James Kevin Wholey



19

Mr. Wholey has broad experience at the intersection of federal government, national security and international business. His specific focus is on the legislative, policy and compliance issues involved in international investment, trade and business development. Through his international business and federal government relations practice, he assists clients with transnational compliance matters (Foreign Corrupt Practices Act, EAR, ITAR, export licensing and involvement with various sanctions regimes) and works frequently with the Administration and Capitol Hill. He spent more than a decade as a senior staff member for several U.S. senators, including three years as chief of staff to then-Senate Leader Bob Dole (R-KS), for whom he also handled trade and telecommunications issues.



jwholey@phillipslytle.com
202.617.2714

Alla Naglis

KING & SPALDING

20

+7 495 228 8504
anaglis@kslaw.com



Alla Naglis is a partner with King & Spalding's Moscow office. She has over 20 years of advising on a daily basis major U.S., European and Russian companies on virtually all aspects of media and entertainment industry, telecommunications, e-commerce and IT, technology and know-how protection; and data privacy and security issues. The scope of her expertise ranges from counselling and contractual matters to regulatory advice and representation of clients in courts and arbitration. In data privacy area, her experience includes counseling on internal compliance policies and audits for major international players, as well as compliance checks of local vendors or partners. Ms. Naglis has been consistently ranked as one of the leading Russian TMT lawyers.

Maxim Khlopotin



21

Mr. Khlopotin, of counsel to Sapronov & Associates, is a multi-lingual Associate at the Law Firm “Degroux Brugère” based in Paris. He advises international and domestic companies and investments funds on Private Equity, M&A and capital investment. He is also experienced in the fields of leveraged buyout acquisitions (LBO). Prior to joining Degroux Brugère, he practiced with Neptune AARPI (2015-2019) and then Luchtenberg Avocats.

Mr. Khlopotin is a dual French-Russian national and speaks French and English fluently in addition to his native language of Russian. He is licensed to practice in France as qualified attorney (avocat) and in Russia as a legal counsel.

For further information, please visit:
<http://www.degrouxbrugere.com/maxim-khlopotin>



mkhlopotin@wstelecomlaw.com
770.399.9100