

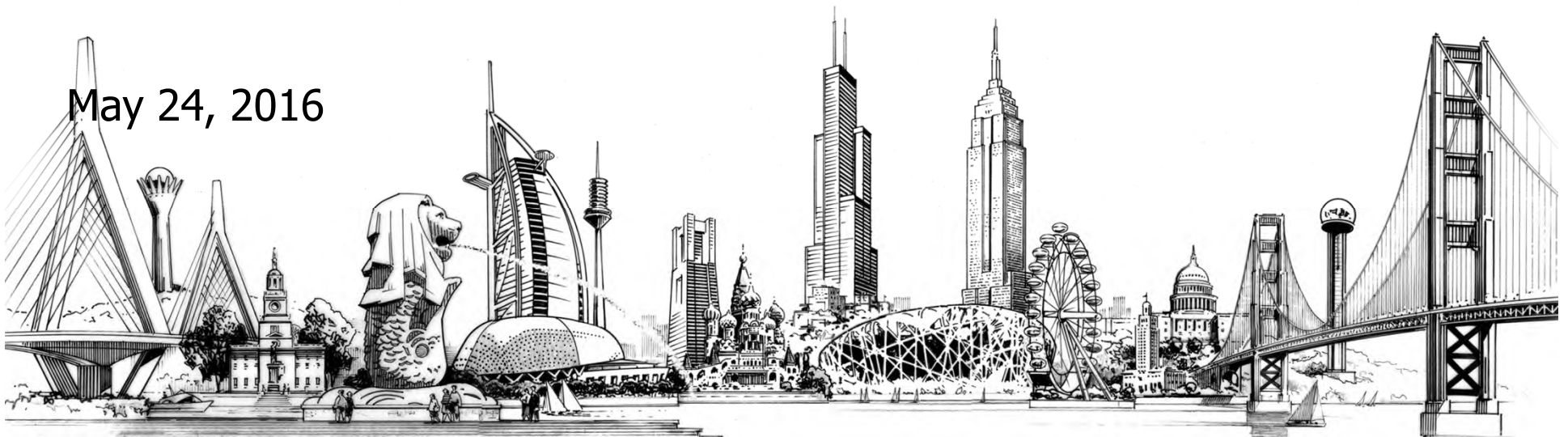
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M&A ACADEMY: ISSUES IN TELECOM TRANSACTIONS

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Overview

- Nuts and Bolts
 - Types of Telecom Transactions Subject to Regulation
 - Deal Timelines and Where Telecom Regulatory Fits In
 - Due Diligence & Negotiations
 - Getting to Closing
 - Post-Closing Issues
- Advanced Topics: Ownership Pitfalls
 - Media Concentration
 - Foreign Ownership
 - National Security Reviews

SECTION 01

NUTS AND BOLTS

Telecom Transactions

- How are regulated telecom/broadcast transactions different from other transactions?
 - Major part of business or assets wrapped up in regulated operations
 - Prior government approvals may be required
 - specialized due diligence and noncompliance analysis is required
 - special ownership limitations
- Potential material impact on:
 - value of the deal
 - time to closing
 - structure of the deal and new ownership

Telecom Transactions (cont'd)

How to identify a "telecom transaction:" FCC Licenses

- "Section 214" authorization
- submarine cable landing licenses
- Wireless licenses:
 - point to point microwave (fixed)
 - spectrum licenses purchased at auction, e.g., ASW-1 license, Wireless communications service license
 - Business Radio Licenses
 - satellite earth stations
- equipment authorizations (manufacturers)

Telecom Transactions (Cont'd)

How to identify a "telecom transaction:" State Licenses

- Certificates of Public Convenience and Necessity
- Registrations

Types of Telecom Transactions

- Corporate Transactions: Prior Approval Requirements for Transfers of Control
 - Mergers and Acquisitions
 - Securities Purchases and sales
 - Majority
 - Minority
 - Diminishing Control
 - Others
 - Veto Power
 - Intracorporate Reorganizations- roll ups and pro forma changes

Types of Telecom Transactions (Cont'd)

- Change in De facto Control (e.g., Board of Directors)
 - Management Services Agreements

“Intermountain” control criteria:

- unfettered use of facilities and equipment
- control over daily operations
- who makes policy decisions (filing with the FCC)
- authority to hire and fire employees
- payment of financing obligations
- who gets profits from the business

Example

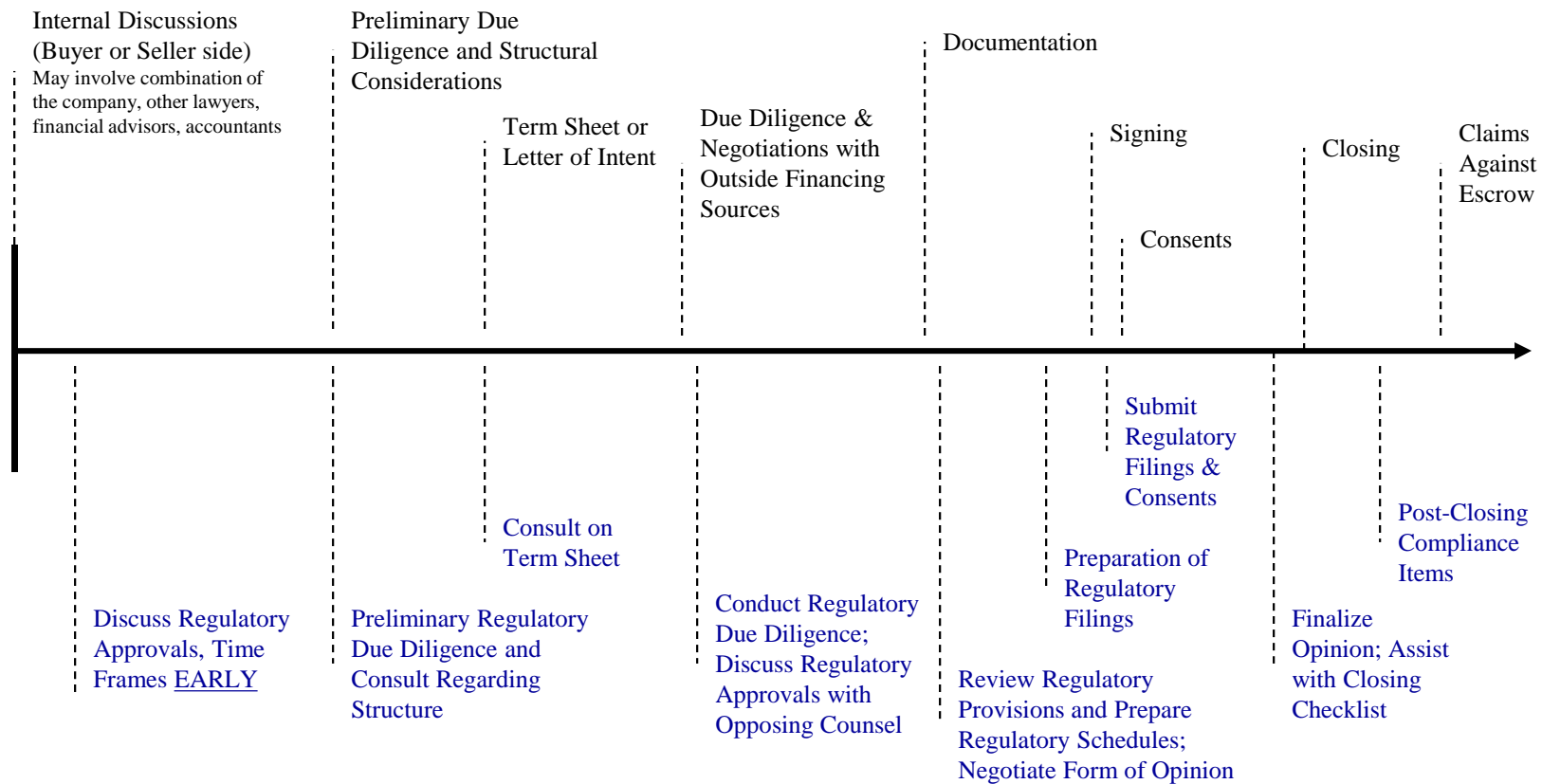
Types of Telecom Transactions (Cont'd)

- Corporate Transactions: Asset Purchases
 - Acquiring all or part of regulated assets or facilities
 - wireline customer are assets (FCC)
 - Slamming Laws; Mass Migration Rules
 - Licenses/Authorizations
- Bankruptcy

Types of Telecom Transactions (Cont'd)

- Financing Transactions
 - Equity Issuances
 - Public Offerings
 - Private Offerings
 - Debt Issuance
 - Term Loan
 - Revolving Credit Facilities
 - Notes
 - Letters of Credit
 - Bridge Loans
 - Demand Notes
 - But also guarantees and security interests

Deal Timelines and Where Telecom Regulatory Fits In



Due Diligence & Negotiations

- Diligence issues differ depending on type of transaction and parties
 - Buyer Diligence
 - Seller’s FCC and state licenses, certifications & registrations,
 - Franchises
 - Foreign Operations
 - Interconnection and commercial agreements,
 - Right of Way Agreements,
 - Compliance including: FCC “Red Light Status,” USF and E-Rate, Privacy, complaints, enforcements and investigations
 - Seller Diligence
 - Ownership of Buyer and perhaps some of same diligence as Buyer (e.g., FCC Red Light Status)
 - Lender Diligence

Due Diligence & Negotiations (Cont'd)

- Negotiations
 - Representations & Warranties
 - Covenants
 - Closing Conditions
 - Termination Provision
 - Schedules
 - Opinions

Getting to Closing

- Regulatory Approvals:
 - FCC – wireline, wireless, cable landing, experimental
 - state – approvals and required notices
 - foreign – approvals and notices
- Other Consents (Franchises, Vendors, Customers)
- Opinions

- Example

Post-Closing Issues

- Consummation Notices
- Escrow Claims and Holdbacks
- Expiration of certain regulatory approvals after a period of time
- Foreign Notices

SECTION 02

ADVANCED TOPICS: OWNERSHIP PITFALLS

Advanced Topics: Ownership Pitfalls

- Media Concentration
- Foreign Ownership
- National Security Reviews

Foreign Ownership

- Foreign Ownership of Telecom Companies
 - Results in increased scrutiny by FCC, Team Telecom, and possibly CFIUS
- FCC
 - Disclose 10% or greater direct and indirect interests
 - Warrants and other convertible instruments generally excluded until exercised
 - Automatic referral of application to Team Telecom if 10% foreign owner (even if intermediate entity)
 - Restriction on aggregate foreign ownership of Holders of Common Carrier Wireless Radio Authorization & Satellite Authorization
 - Indirect: 25% cap; Direct: 20% cap
 - May seek waiver to exceed; must report 5% or greater voting and equity interests
 - Successive multiplication used *except* for non-insulated limited partners and LLC members voting interests
 - Automatic referral of waiver to Team Telecom

Foreign Ownership (Cont'd)

- FCC (Cont'd)
 - Action is deferred for transaction application and/or foreign ownership waiver pending Team Telecom review
 - Requests to reform process
 - Information / Certifications
 - Timing

Foreign Ownership (Cont'd)

- Team Telecom
 - Comprised of Departments of Defense, Homeland Security, and Justice (including FBI)
 - Review for national security and law enforcement concerns
 - Triage Questionnaire requests 5% or greater ownership of Buyer, government contracts, and network information, among other requests
 - No statutory deadline to complete review
 - Deals routinely take 4 months or more
 - A few outliers may take as many as 12 months

Foreign Ownership (Cont'd)

- Team Telecom (Cont'd)
 - May be asked to enter into National Security Agreement (NSA) or Letter of Assurance (LOA)
 - NSA Examples: Altice/Cequel; Softbank/Sprint; Deutsche Telekom/T-Mobile; Vodafone/Verizon/Verizon Wireless
 - LOA Examples: Altice/Cablevision, GlobeNet, Hawaii Telcom
 - Team Telecom Types of NSA and LOA Conditions
 - Designated Point of Contact
 - U.S. Records (CPNI, billing)
 - CALEA Compliance
 - Equipment / Vendors

Foreign Ownership (Cont'd)

- Committee on Foreign Investment in the United States (CFIUS)
 - Inter-agency committee reviews deals that could result in “control” of U.S. business by foreign person
 - Control is defined in functional terms as the ability to exercise certain powers over important matters relating to the U.S. Business
 - CFIUS regulations provide several examples of transactions resulting in control
 - One example of a transaction NOT being covered is if foreign person holds 10% or less of voting interest and holds interest “solely for the purpose of passive investment”

Foreign Ownership (Cont'd)

- CFIUS (Cont'd)
 - Voluntary notice; U.S. Government may self-initiate
 - 30 days statutory deadline; possible 45-day investigation period
 - In rare cases, parties may be asked to withdraw and re-file at end of 75 days
 - Mitigation measures may be requested
 - Team Telecom NSA
 - Proxy Agreement
 - Others

Biographies



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Catherine Wang's practice focuses on telecommunications regulatory issues, including M&A and financing transactions, technology policy, and licensing. She practices before the Federal Communications Commission (FCC), State Public Utility Commissions (PUCs), Congress, the Commerce Department, and many foreign regulatory agencies. Catherine counsels on strategic regulatory and compliance issues relevant to equipment manufacturers and wireless, broadband, international, long distance, and local service providers. She assists clients through advocacy in rulemakings, agency enforcements, and other administrative proceedings before regulatory agencies.



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