WILLKIE FARR & GALLAGHER LLP

CLIENT MEMORANDUM

LUCENT SETTLES FCPA CLAIMS RELATED TO TRAVEL AND ENTERTAINMENT EXPENSES

On December 21, 2007, Lucent Technologies Inc. ("Lucent") settled charges that the company violated the Foreign Corrupt Practices Act ("FCPA") by improperly recording travel and entertainment expenses for Chinese government officials totaling over $10 million from 2000 to 2003. In connection with the settlement, Lucent entered into a non-prosecution agreement with the United States Department of Justice ("DOJ") under which DOJ agreed not to file criminal charges against the telecommunications company. Additionally, the company, which merged with Alcatel SA on December 1, 2006, agreed to pay a $1 million penalty. Lucent also entered into a settlement with the Securities and Exchange Commission ("SEC"), which also alleged violations of the "books and records" and "internal controls" provisions of the FCPA in connection with the expenditures. Under the SEC agreement, the company neither admitted nor denied the allegations against it and agreed to pay a penalty of $1.5 million.

According to the allegations, Lucent paid over $10 million to provide 315 trips for Chinese government officials to the United States and elsewhere between 2000 and 2003. Approximately 1,000 officials employed by Chinese state-owned telecommunications entities allegedly received the travel benefits. According to DOJ and the SEC, Lucent allegedly arranged many of the trips to allow the officials to inspect Lucent's factories and to train the officials in using Lucent's equipment, but many of the officials allegedly spent little or no time in the United States actually visiting Lucent's facilities. Instead, the officials visited tourist destinations, such as Disney World, Niagara Falls, Universal Studios, the Grand Canyon, Las Vegas, Hawaii, San Francisco, Los Angeles, and New York. According to DOJ, Lucent also allegedly provided "educational opportunities" for relatives or close associates of the Chinese officials (including a paid internship at Lucent and tuition for two business programs).

According to the SEC's complaint, Lucent improperly recorded many of these trips and expenses in its books and records. Lucent booked over 160 trips to its "Factory Inspection Account," even though the Chinese officials allegedly did not visit Lucent factories during many of the trips. Similarly, Lucent recorded educational benefits as "marketing expenses," a description that the SEC suggested was improper. According to the SEC, Lucent lacked sufficient internal controls to ensure that the company authorized trips only for appropriate business purposes and to detect and prevent trips primarily for sightseeing, entertainment, and leisure.

The Lucent case provides substantial guidance on a critical subject that companies routinely face in conducting business abroad: the extent to which companies may provide travel and entertainment expenses for foreign government officials. DOJ's and the SEC's positions make clear that U.S. regulators expect travel to be connected to a legitimate business purpose, such as training, factory inspection tours, or other direct promotion of a company's products and services. Moreover, according to the SEC, trips that have "a disproportionate amount of sightseeing, entertainment, and leisure" may potentially violate the FCPA.

The Lucent case also reaffirms that any travel benefit provided to foreign government officials must be reasonable and bona fide. In the Lucent case, several trips allegedly involved per diem cash payments of $500 to $1,000, while also paying for the officials' lodging, transportation, food, and entertainment expenses. Where feasible, companies should pay expenses directly to vendors or the foreign entity itself to reduce FCPA risks. Companies should also implement stringent internal controls, including internal approval requirements, to ensure that travel and entertainment expenses comply with the FCPA and that expenses are booked properly.

Lucent was represented in these matters by Martin J. Weinstein, Robert J. Meyer and James C. Dugan of Willkie Farr & Gallagher LLP's Compliance and Enforcement Practice Group.

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If you have any questions concerning the foregoing or would like additional information, please contact Martin J. Weinstein (202-303-1122, mweinstein@willkie.com), Robert J. Meyer (202-303-1123, rmeyer@willkie.com), James C. Dugan (212-728-8654, jdugan@willkie.com) or Jeffrey D. Clark (202-303-1139, jdclark@willkie.com) of Willkie Farr & Gallagher LLP's Compliance and Enforcement Practice Group, or the attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is headquartered at 787 Seventh Avenue, New York, NY 10019-6099 and has an office located at 1875 K Street, NW, Washington, DC 20006-1238. Our New York telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our Washington, DC telephone number is (202) 303-1000 and our facsimile number is (202) 303-2000. Our website is located at www.willkie.com.

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