

SECURITIES REGULATION
Professor John Orcutt
Spring Semester 2008
MIDTERM EXAMINATION

Instructions:

1. This is a take-home examination. You must turn your exam into the Registrar's Office by 12:00 noon on Friday, March 7th.
2. This examination consists of 5 questions and is worth a total of 30 points (out of 300 possible points for the course as a whole). The examination will be graded on a "pass/fail" basis. If you "pass" the exam, you will receive all 30 points. If you do not "pass" the exam, you will receive some level of points below 30.
3. Because the examination is being graded on a "pass/fail" basis, you are free to consult with your classmates in developing your answers – although you must write your own answers and may not copy from another student.
4. Your answers must be typed (use single spacing), stapled and include your EXAM NUMBER on each page. PLEASE DO NOT INCLUDE YOUR NAME ANYWHERE ON YOUR EXAM.
5. Should you find it necessary in answering a question to assume a fact not given in the problem as stated, you may do so. However, you should clearly indicate that you are making an assumption and you should explain why you consider it a reasonable assumption to make.
6. I have tried my best to write and proofread the exam so that there are no distracting typos or other errors – but, I may not have been totally successful. If you believe there is a typo or other error that makes it difficult to answer a particular question, please point out the error in your blue book and any assumption you used to answer the question.
7. If a given rule that you need to reference is not in the Choi/Pritchard rulebook, please be aware that the SEC provides a set of law and regulations at www.sec.gov that are freely accessible to the public.

QUESTIONS 1 – 4:

January 30, 2008 [PLEASE ASSUME YOU ARE ANSWERING THESE QUESTIONS ON JANUARY 30TH]: Burst Telecom, Inc. (“Burst”) is a national wireless telephone service company, serving 8 million customers in roughly 250 markets in 25 states and 5 countries. Burst’s common stock is traded on the New York Stock Exchange with a market capitalization of roughly \$40 billion. You are in the process of working on Burst’s Annual Report on Form 10-K. To give you an idea of the size of Burst’s business, Burst will be reporting the following summary numbers for the fiscal year ended December 31, 2007:

- 2007 Revenues = \$15.2 billion
- 2007 Profits = \$2.7 billion
- Total assets as of December 31, 2007 = \$23.4 billion
- Stockholders’ equity (asset – liabilities) as December 31, 2007 = \$9.8 billion

1. When is Burst required to file its Form 10-K? In providing your answer, please cite the specific statutory and regulatory provisions that apply.

Earlier today, the following issues came to your attention.

2. Burst received a troubling letter from the Federal Communications Commission (“FCC”) today. A copy of the letter is attached as Exhibit A hereto and some supplemental information is attached as Exhibit B hereto. Is Burst required to publicly disclose the contents of the FCC letter? Martha, the President and CEO of Burst has clearly communicated to you that she does not want to make any public disclosure regarding the FCC letter. If you determine the contents of the letter must be disclosed, please explain when the disclosure must be made (e.g., can the disclosure wait until the 10-K or will Burst be required to 8-K the letter)? In providing your analysis, please cite the specific statutory and regulatory provisions that apply.
3. In preparing for the 10-K, the auditors came across some troubling information. Burst recently began providing its wireless telephone service in France. Apparently, Burst’s Senior Vice President in Charge of Europe paid \$500,000 to a French official in 2007 to help Burst obtain the necessary spectrum rights for operating its business. Neither the \$500,000 payment nor the \$5 million slush fund from which the Vice President got the money appear on Burst’s financial statements. Have any provisions of section 13(b) of the Exchange Act been violated? If so, by whom?
4. Burst would like to include in the Form 10-K the following basic description of Burst:

“Burst is the nation’s leading wireless carrier and maintains the industry’s highest level of customer satisfaction.”

Is there anything potentially troubling about the above statement? Please advise Burst.

QUESTION 5:

Acme Corp. ("Acme") is a medical device company whose common stock trades on AMEX with a market capitalization of roughly \$250 million. Earlier today, Mary (Acme's CEO) was at a big medical device company trade show. Mary was in a back room talking with Phil (Acme's CFO) about Acme's backlog. During their conversation, the following exchange took place:

Phil: Our backlog looks much better than we expected three months ago. I think it might be time to announce that our projections for the year should be better than we forecasted in November.

Mary: That is great. We can make the announcement next week.

As soon as Mary finished her sentence, they hear a "hrmmphh", and turn around to see Henry Grubman, a research analyst for Pierce Securities (a major Wall Street investment bank) who covers Acme's securities, standing in the room. Henry had walked into the room while Phil and Mary were talking and heard everything.

Has Acme, Mary or Phil violated Regulation FD? What should Acme do? In providing your analysis, please cite the specific statutory and regulatory provisions that apply.

EXHIBIT A

[FCC LETTERHEAD]

January 30, 2008

Burst Telecom, Inc.
2 White Street
Concord, NH 03301

Attention: Martha Stewart, President and CEO of Burst Telecom, Inc.

Dear Ms Stewart,

We are writing to inform you that we are conducting a formal investigation of your radiofrequency spectrum usage in the following markets may be in violation of the terms of your spectrum licenses:

- New York
- Los Angeles
- Chicago
- Atlanta
- San Francisco
- Boston

We are investigating whether Burst has been intentionally utilizing radiofrequency spectrum that belongs to other wireless carriers. This is an extremely serious matter to the FCC. If we determine that Burst has been intentionally misappropriating spectrum belonging to others, the FCC has the power to both impose significant financial fines on Burst and rescind Burst's spectrum licenses in those markets.

We expect your full cooperation during this investigation and we will be in touch with you shortly.

Sincerely,

/s/ Maxwell Smart

Maxwell Smart
Special FCC Investigator

EXHIBIT B

Supplemental Information about the FCC Letter

1. I know almost nothing about FCC law – so please just assume that the FCC has the ability to conduct such an investigation and impose such sanctions, including rescinding Burst's spectrum licenses.
2. The six markets in the FCC letter are Burst's largest and most profitable markets. They account for approximately 40% of Burst's revenues and 49% of its profits.
3. Martha does not believe there is any truth to the allegations in the FCC letter and will be launching an internal investigation into the matter.
4. You spoke with some lawyers who specialize in FCC law. While the FCC does have authority to rescind spectrum licenses from holders who are found to have intentionally misappropriated spectrum, they do not believe that the FCC has ever exercised that authority.