



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 43, and 63

[IB Docket No. 17-55; 16-131, FCC 17-136]

Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) eliminates the annual international Traffic and Revenue Reports. The submission of the Traffic and Revenue Reports is no longer necessary as the costs of the data collection now exceed its benefits. Instead, the Commission will rely on commercially available data, along with targeted data collections when necessary, to meet its statutory objectives. The Report and Order also reduces the burdens of the Circuit Capacity Reports, for instance by eliminating reporting of terrestrial and satellite circuits.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for 47 CFR 0.457(d)(1)(xi), 1.767(g)(13) through (16), 43.62, 43.82, 63.10(c)(2), 63.21(d), 63.22(e), (h) and (i). The amendments to 47 CFR 43.62, 43.82, and 63.22(h) require approval of information collection requirements by the Office of Management and Budget (OMB) prior to becoming effective; and the effective date for amendments to 47 CFR 0.457(d)(1)(xi), 1.767(g)(13) through (16), 63.10(c)(2), 63.21(d), 63.22(e) and (i) will be the same as those for 47 CFR 43.62, 43.82, and 63.22(h) because those amendments are directly related to each other. The Commission will publish a separate document in the Federal Register announcing the effective date of these rule changes.

FOR FURTHER INFORMATION CONTACT: Veronica Garcia-Ulloa, Kimberly Cook, or David Krech, Telecommunications and Analysis Division, International Bureau, FCC, (202) 418-

1480 or via email to Veronica.Garcia-Ulloa@fcc.gov, Kimberly.Cook@fcc.gov, David.Krech@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, Office of the Managing Director, FCC, (202) 418-2918 or via email to Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in IB Docket Nos. 17-55 and 16-131, FCC 17-136, adopted and released on October 24, 2017. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street S.W., Washington, DC 20554. The Report and Order is also available at

http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1024/FCC-17-136A1.pdf.

The Commission will send a copy of the Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A).

Synopsis

A. Traffic and Revenue Reports

1. After reviewing the record and based on its understanding of the competitive nature of the international services sector, the Commission concludes that the filing by providers of the annual Traffic and Revenue Reports is no longer necessary, as the costs of this data collection now exceed the benefits of the information. As advocated by parties in this proceeding, the Commission will rely on targeted data collections when necessary in combination with third party commercial data sources to achieve the Commission's statutory obligations, including the ability to enforce its benchmarks policy or address any other anticompetitive concerns that may arise on U.S.-international routes, in a way that will impose fewer costs on both international service providers and the Commission. To minimize the burdens with this approach, each service provider is required to complete a one-time filing, to be updated as

appropriate, listing the routes on which it has direct termination arrangements with a carrier in the foreign destination.

2. Based on its review of the record in this proceeding, the Commission agrees with commenters that there are significant costs to prepare and file the Traffic and Revenue Reports. The Commission conducts the cost-benefit analysis here using a “breakeven analysis” to determine how large the benefits would need to be to exceed the estimated costs. Based on that review, the Commission concludes that the annual social benefits attributable to the Traffic and Revenue Reports no longer exceed their estimated social cost.¹

3. In 2016, 1,957 entities filed information regarding their 2015 international traffic and revenue.² Based on the Commission’s previous estimates³ and on the record, the best estimate of the industry-wide cost of collecting and filing the traffic and revenue data in 2016 ranges from \$604,415 to \$1,203,160.⁴ In addition, the cost to the Commission to review the

¹ The social benefit is the total benefit to society from providing the reports, and the social cost is the total cost to society of producing them, including the private costs to industry and the Commission of collecting the data and producing a report.

² Of the 1,957 entities, 1,801 filed a registration form without any data because they either did not have any international revenues in 2015 or had less than \$5 million in International Calling Service (ICS) resale revenue. Seventy five filed data for route-specific ICS facilities-based services and facilities-based International Private Line Services. Eighty one filed only the world ICS resale data, resale private line services, and/or International Miscellaneous Services.

³ The Commission used an estimate of the average burden for the filing entities. For example, the burden estimate should be higher than the actual burden for entities with facilities-based service on a few routes and lower than the burden on entities with worldwide facilities-based services, such as AT&T and Verizon. In 2014, the Commission estimated that on average filers spend one hour preparing and filing the registration form; two hours preparing and filing world total ICS resale data; 150 hours preparing and submitting route-by-route data for facilities-based ICS and or international private lines; and 50 hours preparing and filing revised data. The Commission estimated the hourly cost at \$35 per hour. See OMB Control Number 3060-1156, ICR Ref. No. 201501-3060-002, FCC Supporting Statement at 11-13 (2014) (2014 Supporting Statement), https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201501-3060-002.

⁴ In estimating the costs, the Commission used a range of hours to account for the differences between entities serving a few routes and those with worldwide service. Based on the very general evidence in the record, the Commission chose 406 hours as the upper limit of the range to approximately reflect the potentially higher number of hours that a few large carriers, such as AT&T and Verizon, reportedly needed. The Commission used a range of one to two hours to fill out, verify, and submit the registration form. This approach accounts for Iridium’s criticism that filling out a registration form may require examining the firm’s data to ensure that it is appropriate, and having an attorney check the form for accuracy. At the low end of the Commission’s range, the total number of hours to prepare and submit the data for industry is

submitted data and publish the U.S. International Telecommunications Traffic and Revenue Data report in 2015, the last year the Commission released a public report, was approximately \$112,076.⁵ Thus, the Commission estimates the overall annual cost of collecting and publishing the Traffic and Revenue Reports to be in the range of \$716,491 to \$1,315,236.

4. The Commission also finds, given the increasing level of competition on most U.S.-international routes, that the benefits of the reports have so diminished that they no longer outweigh those costs. When the requirement for carriers to file Traffic and Revenue Reports was established, there was little competition in the international telecommunications markets and the reports were an important tool for the Commission to monitor the markets. The data from the reports were instrumental in developing Commission policies and actions that protect U.S. carriers and consumers from anticompetitive conduct and high settlement rates, including the development of the benchmarks policy.

5. Circumstances have changed substantially over the years, however. As the Commission discussed in the Section 43.62 NPRM, 82 FR 18090, April 17, 2017, since the implementation of the World Trade Organization (WTO) Basic Telecom Agreement 20 years ago⁶ and the establishment of the Commission's benchmarks policy, the international telecommunications sector has become much more competitive on both the U.S. and foreign ends. The Commission explained that "[t]his is due to relaxed government regulations, entry by

17,269 hours (1,801 + 243 + 15,225). At the high end of the Commission's range, the total number of hours is 34,376 hours (3,602 + 324 + 30,450). Multiplying these figures by the hourly wage of \$35 per hour yields a range of \$604,415 to \$1,203,160 for the total cost to industry of producing the data.

⁵ 2014 Traffic and Revenue Report, https://apps.fcc.gov/edocs_public/attachmatch/DOC-340121A1.pdf and http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0701/DOC-340121A2.xlsx. In the Section 43.62 NPRM, the Commission estimated that staff would spend 2,218 hours reviewing and publishing the data at a total cost of at least \$112,076.

⁶ The results of the WTO's basic telecommunications services negotiations are incorporated into the General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS. See World Trade Organization, Fourth Protocol to the General Agreement on Trade in Services, 36 I.L.M. 366 (1997) (Apr. 30, 1996), https://www.wto.org/english/tratop_e/serv_e/4prote_e.htm. The Commission refers to these results, as well as the basic obligations contained in the GATS, as the "WTO Basic Telecom Agreement."

new carriers, entry by existing incumbents into other countries' markets, technological developments that have enhanced ease of entry, and, perhaps most significantly for the future, the development of VoIP-based alternatives to traditional international switched services, such as Skype, FaceTime, Viber, or WhatsApp.”

6. For the sector as a whole, U.S.-international average settlement rates and average ICS revenue per minute have dropped dramatically. Average settlement rates paid out by U.S. carriers have decreased from \$0.18 per minute in 2000 to \$0.03 per minute in 2014, an 83 percent drop. Another indicator that competition has driven down rates is that settlement rates to most foreign points are well below the benchmark rate established for that country, with the majority of minutes of calling on highly competitive routes with low settlement rates. Seventy-five percent of routes were below benchmark in 2014, a rise from three percent in 1997, and these constituted 98.7 percent of total minutes of international ICS calling from the United States.⁷ In 2014, 75 percent of all minutes were on routes that had settlement rates below \$0.02. While only 30 percent of routes were below the settlement rate of \$0.05 per minute in 2014, these constituted 88 percent of the total minutes. Average facilities-based ICS revenue per minute, which is a general measure of international calling prices, has decreased from \$0.47 per minute in 2000 to \$0.04 per minute in 2014, indicating a drop of 91 percent in the price to consumers for international calling.

7. The Traffic and Revenue Reports are also no longer comprehensive, given the nature of the international telecommunications sector today. Consequently, the data reveal only a portion of the overall picture of international communications, a portion that is likely to grow smaller over time as more consumers use non-interconnected VoIP and other alternative technologies that are not included as part of the traffic settled with foreign carriers and therefore

⁷ Total settlement payments above each country's benchmark rate (counting only payments for that portion of the settlement rate above the benchmark, if any) were \$211 million. The highest benchmark of \$0.23 per minute was applied to new countries and routes for purposes of this analysis. The benchmarks do not necessarily reflect the current cost of termination, and individual routes may have lower or higher costs of termination. The cost of termination has fallen significantly since 1997, and thus the benchmark rates for many routes are probably higher than the actual cost of termination of international ICS calls.

are not included in the Traffic and Revenue Reports. The Commission can use commercially available data to obtain a more complete picture of the international communications marketplace, including non-interconnected VoIP.⁸ For these reasons and in light of the alternatives available when and where issues may arise, the Commission concludes that the Traffic and Revenue Reports are no longer beneficial or necessary, and eliminates this annual filing requirement from the rules.

8. The Commission recognizes, however, that a number of routes are still not competitive and have not seen the reduction in settlement rates or calling rates that come from competition.⁹ As the Commission noted in the Section 43.62 NPRM, 48 routes have settlement rates above their respective benchmark rates. These routes account for only about one percent of the total minutes terminated on fixed networks, but represent almost 21 percent of the total fixed U.S. settlement payouts worldwide. In the future, should any issue arise, such as potential anticompetitive conduct on these or other routes, the Commission has broad authority to investigate such issues.

9. The Commission has an established process for identifying and addressing issues of alleged anticompetitive conduct on U.S.-international routes, including the increase of settlement rates above the appropriate benchmark rate for the route. That process provides an opportunity for U.S. carriers to file complaints or petitions, as well as for the Commission to act on its own motion. As part of that process, the Commission has used the annual traffic and revenue data, requested data from carriers, and sought public comment on allegations of anticompetitive conduct. In the Section 43.62 NPRM, the Commission specifically sought

⁸ For example, an enterprise license for TeleGeography Report and Database is approximately \$25,000. TeleGeography, <http://www2.telegeography.com/telegeography-report-and-database>. As opposed to the analysis of the social benefits of Circuit Capacity Reports as a public good, the Commission finds such benefits associated with the Traffic and Revenue Reports to be relatively minimal.

⁹ Consistent with economic theory and Commission precedent, the Commission treats each international route as a separate market.

comment on how to obtain data and information to address instances of anticompetitive conduct on a U.S.-international route that adversely affect U.S. consumers or U.S. carriers if the annual traffic and revenue reports are eliminated.

10. The Commission agrees with commenters that it can continue to use targeted data requests to international service providers when necessary in combination with data from third party commercial sources, which is a less burdensome but effective way of achieving its statutory objectives. Through these means, the Commission should be able to obtain any necessary information for merger review and investigations of possible anticompetitive conduct on U.S.-international routes. However, to ensure this targeted data request process is efficient, the Commission must maintain a list of the particular routes that entities serve. This list of routes should be readily available to a service provider as each provider negotiates a contract in the normal course of business. Additionally, the Commission is not aware of this information being otherwise available from third party commercial sources and providing this information will be less burdensome than filing the annual Traffic and Revenue Reports. This list will provide the Commission with information, for example, to identify the service providers from which it may need to seek information on any anticompetitive issue that arises in a particular region or on a particular route. Importantly, this list will also inform the Commission as to which service providers should not be subject to a data request.

11. Consequently, the Commission will require international facilities-based service providers to submit and maintain, a list of routes on which they have direct termination arrangements with a foreign carrier. Routes on which the U.S. carrier has no arrangement with a carrier in the destination market and instead provides service to that market through arrangements with third party carriers in intermediate countries would not be included on the list. The Commission directs the International Bureau to establish for the Commission the specific process for the filing of the lists. Service providers with existing direct termination arrangements must

submit their list within thirty (30) days after the International Bureau releases a public notice with the procedures for filing. Thereafter, service providers must update their lists within thirty (30) days after they add a termination arrangement for a new foreign destination or discontinue arrangements with a previously listed destination. A new service provider or one without existing direct termination arrangements must file its list within thirty (30) days of entering into a direct termination arrangements with a foreign carrier.

12. The Commission will treat the lists as not routinely available for public inspection, as AT&T requests. The Commission finds that the routine public disclosure of these carrier lists could cause competitive harm to carriers and may contravene established Commission policy. In a recent ex parte filing, AT&T states that it “treats information concerning the U.S. international routes that are served through direct and indirect termination arrangements as confidential information that is not customarily disclosed to the public.” AT&T contends that public disclosure of this information would allow the identification of the specific routes served by each U.S. carrier via indirect termination arrangements, which would not support longstanding Commission policy fostering the least cost routing of U.S. international traffic to reduce high foreign termination rates.” The Commission agrees and concludes, consistent with its decision in 2013, that it should not routinely make publicly available route-specific data, as it could enable foreign carriers “to track and restrict hubbed traffic” and “doing so might frustrate U.S. policy in favor of least cost routing and lower consumer rates.” Although in the past, the Commission has issued Orders that included data from the Traffic and Revenue Reports regarding which U.S. carriers offered facilities-based service on a particular international route, those Orders did not disclose whether the particular carrier’s facilities-based service was provided on a direct or indirect basis. Nor is the Commission aware of information regarding indirect routing being publicly available through other sources. The Commission adopts a new provision in § 0.457(d) of the rules to include the lists and updates of U.S.-international routes for which a carrier has an

arrangement with a foreign carrier for direct termination in the foreign destination as records not routinely available for public inspection. This approach will allow the Commission to send letters of inquiry in a docket or proceeding to investigate a potential anticompetitive issue on a particular U.S.-international route.

13. Based on the record and considering changing market conditions, the Commission finds that the Traffic and Revenue Reports are no longer necessary. The Commission anticipates that, in combination with access to commercially available international telecommunications market data, the use of targeted information requests will allow the Commission to continue to fulfill its statutory obligations and protect U.S. interests. Such information requests will be targeted for specific situations,¹⁰ and could include any information previously reported for the Traffic and Revenue Report – e.g., minutes completed on foreign networks; settlement payouts for call completion on foreign networks; foreign-billed minutes; and, foreign-billed settlement receipts. If a service provider requests confidential treatment of its response, such a request should be made in accordance with § 0.459 of the Commission’s rules.

B. Circuit Capacity Reports

14. Based on the record in this proceeding, the Commission finds it is in the public interest to retain the circuit capacity data collection with some modifications to streamline and reduce the burdens on providers. The Commission concludes that the identified social benefits of the Circuit Capacity Reports filed by providers significantly exceed the estimated social cost of producing these reports.¹¹ The data from the Circuit Capacity Reports are necessary for the

¹⁰ In individual cases where merger review analysis and monitoring and enforcement of the benchmarks require data, the Commission can obtain this data from targeted data requests to the parties and other industry stakeholders. In addition, the traffic and revenue data are no longer necessary because the Commission can rely on commercial data sources and targeted data requests for any internal data analysis that it needs to perform.

¹¹ The social benefit is the total benefit to society from providing the reports, and the social cost is the total cost to society of producing them, including the private costs to industry and the Commission of collecting the data and producing a report.

Commission to fulfill its statutory obligations and will continue to play a vital public interest role for other federal agencies. The Commission finds that it is able to streamline this information collection, and will no longer require carriers to file world total circuit data for terrestrial and satellite facilities. The Commission deletes § 43.62, which contains both annual Traffic and Revenue Reports and the Circuit Capacity Reports, and places the revised Circuit Capacity Reports in § 43.82.

15. As the Commission did with the Traffic and Revenue Reports, it conducts the cost-benefit analysis of the Circuit Capacity Reports using a “breakeven analysis.” Based on that review, the Commission concludes that the social value of the social benefits of the Circuit Capacity Reports filed by providers exceeds the estimated social cost of producing the reports. The Section 43.62 NPRM estimated that industry as a whole spent 906 hours preparing and submitting the 2015 Circuit Capacity Reports. The Commission finds, however, that it can streamline the circuit capacity data collection, which will decrease the cost to both industry and the Commission without jeopardizing the Commission’s ability to fulfill its statutory mandates. The Commission will eliminate the requirement to report terrestrial and satellite circuits which will reduce burdens on industry without impairing the Commission’s ability to fulfill its statutory duties. The Commission also finds that going forward the International Bureau can cease preparing and releasing public reports analyzing the data provided in the Circuit Capacity Reports, but should continue to maintain the data and publicly release aggregated data on a timely basis. Based on the record, the Commission estimates that with these changes the annual economic cost for filing entities to compile and submit circuit capacity data to the Commission would be between \$30,065 and \$37,605,¹² and in the Section 43.62 NPRM the Commission

¹² The Section 43.62 NPRM estimated that, in total, the industry spent 906 hours preparing and submitting circuit capacity data for the 2015 U.S. International Circuit Capacity Data report. This includes 30 hours for preparing and filing world total terrestrial and/or satellite circuits, a requirement which the Commission has eliminated in this Report and Order, and 17 hours for preparing and filing the registration form by 17 filing entities that only submitted reports for the terrestrial and/or satellite circuits, a requirement which the Commission has similarly eliminated. Subtracting 47 hours—the amount of time by which the reporting

estimated the annual economic cost to the Commission for reviewing the data and producing the public report to be approximately \$22,000, which will decrease going forward because the Commission will no longer publish an annual public report.¹³ Thus, the total annual economic cost of the reporting requirement, including the overestimate for producing the annual report using Commission resources of \$22,280 per year and the resources expended by the filing entities valued at \$37,305 per year, equals no more than \$59,885.

16. The Commission finds that the benefits to the Commission in collecting this data justify the estimated costs of the collection. The Commission currently uses the circuit capacity data for such purposes as analyzing international transport markets in merger reviews.¹⁴ More importantly, these data are essential for the Commission's national security and public safety responsibilities in regulating communications, an important linchpin of the Commission's statutory authority.¹⁵ A number of commenters questioned the usefulness of this information for national security purposes, arguing that the Commission and the national security agencies

burden is reduced under the Commission's revised rules—from the estimated total of 906 hours yields a revised total of 859 hours. The Commission used this as the lower range for total annual variable cost. Adjusting these figures upward to account for AT&T's and Verizon's reported burdens and adding the results to the estimated total of 859 hours yields a revised industry total of 1,074.4 hours annually for the upper end of the range. The estimated total variable cost per year for filing entities is derived by multiplying the total hours by \$35 per hour, the estimated in-house hourly wage for filing entities cited in the Commission's supporting statement on Part 43.62 annual reporting requirements. This calculation produces a range of annual total variable cost for all entities filing circuit capacity data with the Commission from \$30,065 to \$37,605.

¹³ The Section 43.62 NPRM estimates that Commission staff spends 372 hours annually reviewing and publishing the annual circuit capacity report for a total variable cost of \$22,280.

¹⁴ The Commission focuses on submarine cable facilities when analyzing the international transport market.

¹⁵ The Communications Act of 1934 established the Commission “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio . . . for the purpose of the national defense . . .” 47 U.S.C. 151 (charging the Commission with regulating communications by wire and radio for, among other things, the national defense). The Cable Landing License Act of 1921 and Executive Order 10530 also require that the Commission consider national security concerns in its licensing and regulation of cable landing licensees. 47 U.S.C. 35. Exec. Order No. 10530, 19 FR 2709, May 10, 1954 (delegating the President's authority to license submarine cables to the Commission). While the Commission coordinates as necessary and appropriate with the relevant Executive Branch agencies and accords deference to their expertise in identifying and interpreting issues of concern related to national security and other issues, the Commission makes independent decisions on matters within its responsibilities, which can be based in part on concerns raised by the Executive Branch agencies.

already know the owners, capacity, and locations of the submarine cables through the licensing process and that by the time the public reports are released the data are no longer useful. However, submarine cables are critical infrastructure and the circuit capacity data are important for the Commission's contributions to the national security and defense of the United States. More than 95 percent of all U.S.-international voice, data, and Internet traffic is carried over submarine cables, including civilian and military U.S. Government traffic. Submarine cables are used for critical government and business operations, communications, financial transactions, logistics, and transportation. Threats to submarine cables include deliberate attacks, accidents and natural disasters. To maintain the integrity of this critical part of the communications infrastructure, information about capacity holdings, which are not static but change over time, is central to fulfilling the Commission's responsibilities. The Commission uses the data, for example, to have a complete understanding of the ownership and use of submarine cable capacity and to assist in the protection, restoration, and resiliency of the infrastructure during national security or public safety emergencies, such as hurricanes. The Department of Homeland Security (DHS) also finds this information to be critical to its national and homeland security functions. It states that this information, when combined with other data sources, is used to protect and preserve national security and for its emergency response purposes. Although the Commission obtains the ownership and location of individual cables through the licensing process, distribution of a cable's capacity among providers is not required to be reported under the current submarine cable licensing rules and is provided only annually through the Circuit Capacity Reports. Further, the Commission's licensing rules do not require an applicant to include the entities that have acquired capacity on the cable through an Indefeasible Right of Use (IRU) or Inter-Carrier Lease (ICL). While in the past the circuit capacity data often have been dated by the time the Commission's public reports have been released, the Commission has had access to the data when filed and has used those data before the public report is released. In addition, going forward the Commission intends to make the data available to the public on a timelier basis by

releasing the aggregate data without any analysis.¹⁶ The Commission finds that these benefits of the Circuit Capacity Reports, although difficult to monetize, clearly outweigh the minimal costs to industry and the Commission.

17. Based on the Commission's review, there are no alternative reliable third party commercial sources for the reported data.¹⁷ Although some sources collect general capacity information from cable owners,¹⁸ neither the Commission nor DHS has found any alternative sources for capacity holder data. For example, TeleGeography's submarine cable reports include capacity information, but the data are not verified by company officials¹⁹ and do not include capacity holder data. The Commission finds that the social benefits of collecting the data for the Commission's analysis of international transport markets and contributions to the national security, defense, and public safety exceed the costs of producing, collecting, and analyzing the circuit capacity data.²⁰ Accordingly, the Commission retains the collection of this data.

¹⁶ An ancillary benefit of releasing aggregated circuit capacity data (and disaggregated data as appropriate) to the public is the benefit that companies may also rely on the data, at no cost, for example, to advise potential entrants about the likely effects on market concentration and competitive effects if market entry is attempted. In addition, the circuit capacity data support theoretical and empirical research on long-term trends in the international telecommunications industry and help analysts detect structural changes that may foreshadow future regulatory change, including but not limited to specific deregulatory reforms and rule revisions that encourage or protect competition. The Commission anticipates some long-term social benefits from research on industry evolution supported by the availability of the circuit capacity data to telecommunications industry analysts and academic researchers.

¹⁷ Although certain cable capacity data may be available through other sources, those sources are not as reliable as information that has been submitted to a federal agency and verified by officials in the company. As for the capacity holder data, there are no other sources for that information. Letter from Emily Early, Director (Acting), DHS NPPD Strategy, Policy, and Plans, Office of Cyber and Infrastructure Analysis, National Protection and Program Directorate, DHS, to Marlene Dortch, Secretary, FCC (Sept. 21, 2017) at 2.

¹⁸ The data on submarine cable capacity by region that the Commission collects and makes available provide potential entrants or new investors with an accurate industry overview showing where cable capacity connecting the United States to foreign points is presently deployed. The data provide potential new entrants, investors, and other small business entities with business planning data for assessing potential market demand.

¹⁹ An officer of the Filing Entity must certify the accuracy and completeness of the Filing Entity's § 43.62 information.

²⁰ In addition, the Circuit Capacity Reports provide capacity and ownership data useful in the Commission's review of proposed mergers of international submarine cable operators. The data in the Circuit Capacity Reports filed by providers, for example, will facilitate the calculation of potential post-

18. The Commission rejects arguments that it does not have authority to collect circuit capacity data. The Commission has authority to grant – and condition – authorizations and licenses. Specifically, section 214 of the Communications Act gives the Commission authority to “attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require.” The Cable Landing License Act of 1921 and Executive Order 10530 authorize the Commission to condition licenses “upon such terms as are necessary to assure just and reasonable rates and service in the operation and use of the cables so licensed.” The requirement for common carriers to file circuit data dates back to the 1970s, and was extended to cable landing licensees in 2013.²¹

19. Although the Commission retains the Circuit Capacity Reports, it finds that there are ways in which it can further streamline the data collection to reduce the burdens on industry and the Commission while continuing to collect the data necessary to fulfill its statutory obligations. Commenters argue that the Commission should eliminate the requirement for filing terrestrial and satellite circuit data because the data serve no purpose other than for administering

merger market shares that are useful in assessing the possible competitive effects of a merger of submarine cable operators. Additional benefits provided by the Circuit Capacity Reports include the timely sharing of data with other U.S. government entities for public safety and other purposes. The data collected by the Commission that are not business-sensitive will continue to be made publicly available and downloadable to all users at no charge. See 47 CFR 43.62(c)(2).

²¹ In requiring cable landing licensees to file circuit data for submarine cables, the Commission explained in the Part 43 Second Report and Order that:

The Commission found that it has authority to require the filing of such information from these entities. The Commission’s authority to require the filing of international circuit data by common carriers is well established and these carriers currently file circuit data pursuant to § 43.82. The Commission finds it also has authority under the Cable Landing License Act as well as the Communications Act to require cable landing licensees that are not common carriers to report their capacity. As discussed in the Further Notice, the Commission licenses submarine cables and associated cable landing stations located in the United States pursuant the Cable Landing License Act. The provisions of the Cable Landing License Act do not distinguish between common carriage and non-common carriage of services over licensed cables. As the Commission discussed in the Further Notice, the submarine cable capacity data that the Commission will collect will help it to make informed decision as to its policies and procedures developed to implement the requirements of the Cable Landing License Act. This includes, for example, the adequacy of protection for competition and other matters.

Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission’s Rules, IB Docket No. 04-112, Second Report and Order, 78 FR 15615, March 12, 2013.

regulatory fees and the requirement is duplicative of data that carriers must file in the Commission's regulatory fee process. The Commission only uses this circuit data for regulatory fee purposes,²² and revises the rules to discontinue collecting terrestrial and satellite circuit information in the Circuit Capacity Reports. The Commission has a pending proceeding on the methodology for assessing regulatory fees for terrestrial and satellite international bearer circuits in a more efficient and less burdensome manner.

20. The Commission declines, however, to eliminate the required breakdown of net capacity by cable ownership, as suggested by Verizon. Cable landing licensees and common carriers (collectively, capacity holders) are currently required to break down the capacity that they hold on a cable by whether it is held as ownership in the cable, an IRU, or an ICL. This information is not available from other sources. The Commission finds that this breakdown of how the capacity is held is necessary for analyses of critical submarine cable infrastructure and declines to make this change. However, the Commission can reduce the burden on the capacity holders, and does so here, by no longer requiring capacity holders to determine whether the entity from which they acquired a lease or to whom they sell a lease is another capacity holder or similar entity.²³ Accordingly, the Commission directs the International Bureau to revise the Filing Manual to reflect this change.

21. The Commission also declines to eliminate the requirement for submarine cable operators to report the planned capacity of the cable. Cable operators are required to report the intended capacity of the cable two years out from the reporting date based on the planned upgrades to the cable. The Commission finds that the planned capacity information is necessary

²² The Commission included that requirement to report terrestrial and satellite circuits solely for purposes of administering regulatory fees.

²³ Currently each capacity holder nets out IRUs and ICLs sold to U.S. cable landing licensees and U.S. common carriers, which file their own reports, but does not net out capacity sold to other capacity holders, which requires it to determine whether the entity to which it sold capacity is required to file its own capacity holders report.

for analyses of critical submarine cable infrastructure and thus declines to make this change. Similarly, the Commission will continue to require cable landing licensees to report the capacity they hold on all submarine cables on which they hold capacity, and not just on those on which they are licensees. Many cable landing licensees hold capacity on cables on which they are not licensees. This information is necessary for analyses of critical submarine cable infrastructure and thus the Commission declines to make this change.²⁴

22. The Commission does make certain changes recommended by the North American Submarine Cable Association, DOCOMO Pacific, Inc., Globe Telecom, Inc. GTI Corporation, and Level 3 Communications, LLC (collectively, ICIO) to improve the current reporting to encourage more accurate data and to reflect changes in the submarine cable market. First, ICIO argues that allowing only one licensee to file the Cable Capacity Report for a consortium cable requires licensees to share information about their capacity and planned upgrades that may be competitively sensitive. The Commission agrees that the consortium cable reporting requirement raises issues requiring modification of the rules. The Commission therefore removes the requirement in the rules that only one licensee file the capacity for each submarine cable from the rule, and directs the International Bureau to consult with stakeholders on appropriate changes to the Filing Manual to allow for more than one licensee to file a cable operator report for a submarine cable if appropriate. Second, ICIO argues that the capacity holders report fails to consider how capacity is sold in the market today. It states that in addition to sales through IRUs and ICLs, capacity is now sold on a fiber pair or spectrum basis. The Commission recognizes that the way that capacity is provisioned and sold is constantly changing, but the Commission requires disaggregated capacity holder information about submarine cables capacity. The Commission directs the International Bureau to consult with stakeholders and to review and revise as needed the categories of ownership interests reported in the cable capacity

²⁴ By continuing to require both cable landing licensees and common carriers to report their capacity on all cables the Commission will continue to receive data from the majority of holders of capacity on the cables.

holder reports to reflect changes in industry's provisioning of capacity, while ensuring that the capacity holder data are accurately captured by the reporting requirements.

23. In the Section 43.62 NPRM, the Commission proposed to change the confidentiality rule for circuit capacity to clarify that requests for confidential treatment will be consistent with § 0.459 of the Commission's rules and sought comment on the proposal. There were no comments filed on the issue. The Commission finds that it is appropriate to align the rules regarding requests for confidential treatment of information filed in the Circuit Capacity Reports with existing Commission rules on the matter. As such, the Commission adopts the proposal to require that requests for confidential treatment must be consistent with § 0.459 of the Commission's rules.

24. Finally, the Commission finds it unnecessary to amend its systems and processes to enable certifying officers to review and certify the report in a uniform, printable and recordable manner, as suggested by Verizon. The current system already allows the printing of a filing summary that can be reviewed by the filing entity prior to filing.²⁵

C. Transition Issues

25. To prevent the providers of international telecommunications services from incurring potentially unnecessary expenses, on May 1, 2017, the International Bureau granted a temporary waiver of the Traffic and Revenue reporting requirements until 60 days after release of a Commission Order regarding the reporting requirements. The Commission has decided to eliminate the Traffic and Revenue Reports. Consequently, in the event that the actions taken herein to eliminate permanently this information collection are not effective within 60 days of the release of this Report and Order, the Commission finds good cause to extend the waiver for filing

²⁵ The online system allows a filer to print out a "filing summary," which can be saved as a PDF, from an Internet browser. A filer can click on "filing summary" in the upper right-hand corner of any page of the online system. The "filing summary" also includes links to the data templates submitted by the filer. As the filer progresses through the filing, the "filing summary" is updated automatically.

the 2016 international traffic and revenue data, which would have been due on July 31, 2017, until the deletion of this requirement is effective.

26. The Commission adopts a rule requiring each international facilities-based service provider to file with the Commission a list of the routes on which it has direct termination arrangements with a foreign carrier for that route. Service providers with existing direct termination arrangements must submit their lists within thirty (30) days after the International Bureau releases a public notice with the procedures for filing. The lists shall be filed electronically in accordance with instructions to be issued by the International Bureau.

27. Finally, the Commission directs the International Bureau to revise the Filing Manual to implement the modifications to the circuit capacity reporting requirements discussed above. The International Bureau shall issue a public notice seeking comment on the revised Filing Manual, and the Commission delegates authority to the International Bureau, as needed, to delay the March 31, 2018 filing date for the Circuit Capacity Reports (for the data as of December 31, 2017) until the issuance of a revised Filing Manual.

28. In this Report and Order, the Commission eliminates the requirement to file annual Traffic and Revenue Reports. In its place, the Commission will rely on targeted data collections and, to continue to meet its statutory objectives, the Commission requires each international facilities-based service provider to maintain and file with the Commission a list of routes on which it has direct termination arrangements with a foreign carrier for that route. The Commission retains its circuit capacity reporting requirements but removes the requirement to file terrestrial and satellite circuit data. The Commission finds that these actions are in the public interest and will minimize costs while allowing the Commission to fulfill its statutory obligations and protect U.S. interests.

29. This Report and Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The

requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which include most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Act Analysis.

30. IT IS ORDERED that, pursuant to sections 1, 4(i), 4(j), 11, 201-205, 214, 219-220, 303(r), 309, and 403 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 201-205, 214, 219-220, 303(r), 309, and 403, the Cable Landing License Act of 1921, 47 U.S.C. 34-39, and 3 U.S.C. 301, and the Freedom of Information Act, 5 U.S.C. 552, as amended, this Report and Order is ADOPTED.

31. IT IS FURTHER ORDERED that parts 0, 1, 43, and 63 of the Commission's rules are AMENDED.

32. IT IS FURTHER ORDERED that the Report and Order SHALL BE effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except those provisions that contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act WILL BECOME EFFECTIVE after the Commission publishes a document in the Federal Register announcing such approval and the relevant effective date.

33. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Report and Order to Congress and the Government Accountability Office pursuant to the

Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

34. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

35. IT IS FURTHER ORDERED that this proceeding, IB Docket No. 17-55, IS HEREBY TERMINATED.

D. Final Regulatory Flexibility Act Analysis

36. The Report and Order reforms the international services reporting requirements set forth in § 43.62 of the Commission's rules. Specifically, it eliminates the annual Traffic and Revenue Reports. In its place, the Commission will rely on commercially available data, along with targeted data collections when necessary. Through these means, the Commission should be able to obtain any necessary information for merger review and investigations of possible anticompetitive conduct on U.S.-international routes. To ensure that the Commission has the necessary information to meet its statutory obligations going forward, international facilities-based service providers are required to submit and maintain a list of routes on which they have direct termination arrangements with a foreign carrier for that route. Routes on which the U.S. carrier has no arrangement with a carrier in the destination market and instead provides service to that market through arrangements with third party carriers in intermediate countries would not be included on the list. Service providers with existing direct termination arrangements will submit their list within thirty (30) days after the International Bureau releases a public notice with the procedures for filing. Thereafter, service providers must update their lists within thirty (30) days after they add termination arrangements with a new foreign destination or discontinue arrangements with a previously listed destination. A new service provider or one without existing direct termination arrangements must file its list within thirty (30) days of entering into a direct

termination arrangements with a foreign carrier. The Commission will treat the lists as not routinely available for public inspection.

37. Additionally, the Commission further streamlines the Circuit Capacity Reports by eliminating the reporting of terrestrial and satellite circuits, but will continue to require reporting of submarine cable capacity data because these data are essential for the Commission's national security and public safety responsibilities in regulating communications. The reforms adopted in the Report and Order significantly minimize the costs and burdens associated with the data collections by retaining annual reporting requirements for only those collections necessary to serve the public interest and for the Commission to fulfill its statutory obligations and protect U.S. interests.

38. No comments were filed specifically regarding the IRFA. Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all entities, including small entities, in order to reduce the economic impact of the rules on such entities.

39. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

40. The policies and rules adopted in the Report and Order apply to entities providing international common carrier services pursuant to section 214 of the Communications Act of 1934 (the "Act"); entities engaged in providing Voice over Internet Protocol (VoIP) service connected to the public switched telephone network (PSTN) between the United States and any foreign point; entities that operate a telecommunications "spot market" and carry international traffic; entities providing domestic or international wireless common carrier services under section 309 of the Act; entities providing common carrier satellite services under section 309 of the Act; and entities licensed to construct and operate submarine cables under the Cable Landing License Act of 1921 and Executive Order No. 10530. The Commission has not

developed a small business size standard directed specifically toward these entities. As described below, such entities fit within larger categories for which the SBA has developed size standards.

41. These policies and requirements apply to a mixture of both large and small entities. The Commission has not developed a small business size standard directed specifically toward these entities. However, these entities fit into larger categories for which the SBA has developed size standards that provide these facilities or services.

- a. Facilities-based Carriers.
- b. IMTS Resale Providers.
- c. Wireless Carriers and Service Providers.
- d. Wireless Telecommunications Carriers (except Satellite).
- e. Wireless Communications Services.
- f. Providers of Interconnected VoIP Services.
- g. Spot Market Operators.
- h. Providers of International Telecommunications Transmission Facilities.
- i. Satellite Telecommunications Providers.
- j. Operators of Common Carrier/Non-Common Carrier Undersea Cable Systems.
- k. Incumbent Local Exchange Carriers.

42. In order to reduce the costs and burdens on carriers, including small entities, the Commission reforms its international reporting requirements. As proposed in the NPRM the Commission eliminates the requirement to file annual Traffic and Revenue Reports. The Commission sought comment on alternative means of obtaining data on international termination agreements, and determined that instead of the annual reports, it would rely on targeted data collections when necessary, which would be less burdensome for small businesses. All

commenters in the proceeding support the elimination of the Traffic and Revenue Reports. Commenters also support requesting information on a targeted as needed basis. International facilities-based service providers will be required to provide a list of routes on which they have direct termination arrangements. The list of routes will provide the Commission with information to identify carriers from which it may need to seek information on any issue that arises in a region or on a particular route. Service providers must update their information within thirty (30) days as they add termination arrangements with a new destination foreign country or discontinue arrangements with a previously listed country. Maintaining this minimal list is significantly less burdensome than filing an annual traffic report as this information should be readily available to carriers in the normal course of business. ICIO supports a requirement obligating carriers to identify the services they provide and the routes they service. Similarly, AT&T notes that they would not object to providing the Commission, on a confidential basis, a list of routes on which it has termination arrangements with a carrier in the destination foreign country. The Commission will treat the lists as not routinely available for public inspection, as AT&T requests.

43. The Commission retains the Circuit Capacity Reports for the submarine cable data but reduces the burdens of the Circuit Capacity Reports by eliminating the reporting of terrestrial and satellite circuits. The Commission also considered eliminating the required breakdown of net capacity by cable ownership, but found that this breakdown is necessary for analyses of critical submarine cable infrastructure and declined to make this change; the Commission did, however, reduce the burden on capacity holders by no longer requiring them to determine whether the entity from which they acquired a lease or to whom they sold a lease is another reporting entity. The Commission also directed the International Bureau to consult with stakeholders and review and revise as needed the categories of ownership interests reported in the cable capacity reports, to ensure that the cable capacity data are accurately captured by the reporting requirements. Thus, while the Commission retains the Circuit Capacity Reports, it will

further streamline the reports to minimize the burdens associated with the data collection by removing the requirement to file terrestrial and satellite circuit data. This will significantly reduce the cost, time, and burden associated with the circuit capacity data collection. Overall, with the adoption of these changes to the international reporting requirements the Commission minimizes the economic impact on carriers, including small entities, by eliminating unnecessary data collections and retaining annual reporting requirements for only those collections necessary to serve the public interest.

44. Report to Congress: The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.

List of Subjects

47 CFR Part 0

Freedom of information, Reporting and recordkeeping requirements.

47 CFR Part 1

Communications common carriers, Radio, Reporting and recordkeeping requirements,
Telecommunications.

47 CFR Parts 43 and 63

Communications common carriers, Radio, Reporting and recordkeeping requirements,
Telephone.

FEDERAL COMMUNICATIONS COMMISSION.

Katura Jackson,
Federal Register Liaison Officer.
Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 parts 0, 1, 43, and 63 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.457 is amended by adding paragraph (d)(1)(xi) to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d) * * *

(1) * * *

(xi) Lists and updates of U.S.-international routes for which a carrier has an arrangement with a foreign carrier for direct termination in the foreign destination provided pursuant to § 63.22(h) of this chapter.

* * * * *

PART 1—PRACTICE AND PROCEDURE

3. The authority citation for part 1 is revised to read as follows:

Authority: 47 U.S.C. 34-39, 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

4. Section 1.767 is amended by redesignating paragraphs (g)(13) through (15) as paragraphs (g)(14) through (16) and adding new paragraph (g)(13) to read as follows:

§ 1.767 Cable landing licenses.

* * * * *

(g) * * *

(13) The licensee shall file annual international circuit capacity reports as required by § 43.82 of this chapter.

* * * * *

**PART 43 – REPORTS OF COMMUNICATION COMMON CARRIERS, PROVIDERS
OF INTERNATIONAL SERVICES AND CERTAIN AFFILIATES**

5. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996; Pub. L. 104-104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220, as amended; Cable Landing License Act of 1921, 47 U.S.C. 35-39.

6. The heading of part 43 is revised to read as set forth above.

§ 43.62 [Removed and Reserved]

7. Remove and reserve § 43.62.

8. Section 43.82 is added to read as follows:

§ 43.82 Circuit capacity reports.

(a) International submarine cable capacity. Not later than March 31 of each year:

(1) The licensee(s) of a submarine cable between the United States and any foreign point shall file a report showing the capacity of the submarine cable as of December 31 of the preceding calendar year. The licensee(s) shall also file a report showing the planned capacity of the submarine cable (the intended capacity of the submarine cable two years from December 31 of the preceding calendar year).

(2) Each cable landing licensee and common carrier shall file a report showing its capacity on submarine cables between the United States and any foreign point as of December 31 of the preceding calendar year.

NOTE TO PARAGRAPH (a): United States is defined in Section 3 of the Communications Act of 1934, as amended, 47 U.S.C. 153.

(b) Registration Form. A Registration Form, containing information about the filer, such as address, phone number, email address, etc., shall be filed with each report. The Registration Form shall include a certification enabling the filer to check a box to indicate that the filer requests that its circuit capacity data be treated as confidential consistent with Section 0.459(a)(4) of the Commission's rules.

(c) Filing Manual. Authority is delegated to the Chief of the International Bureau to prepare instructions and reporting requirements for the filing of these reports prepared and published as a Filing Manual. The information required under this Section shall be filed electronically in conformance with the instructions and reporting requirements in the Filing Manual.

**PART 63 – EXTENSION OF LINES, NEW LINES AND DISCONTINUANCE,
REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON
CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY
STATUS**

9. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

10. Section 63.10 is amended by revising paragraph (c)(2) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

* * * * *

(c) * * *

(2) File quarterly reports on traffic and revenue within 90 days from the end of each calendar quarter. Such reports shall include the minutes completed on foreign networks; settlement payouts for call completion on foreign networks; foreign-billed minutes; and foreign-billed settlement receipts.

* * * * *

§ 63.21 [Amended]

11. Section 63.21 is amended by removing and reserving paragraph (d).

12. Section 63.22 is amended in paragraph (e) by removing “§ 43.62” and adding in its place “§ 43.82,” by redesignating paragraph (h) as paragraph (i), and adding new paragraph (h) to read as follows:

§ 63.22 Facilities-based international common carriers.

* * * * *

(h) A carrier shall file with the Commission a list of U.S.-international routes for which it has an arrangement with a foreign carrier for direct termination in the foreign destination. The carrier shall notify the Commission within 30 days after it adds a termination arrangement for a new foreign destination or discontinues arrangements with a previously listed destination. The list shall be filed electronically in accordance with instructions from the International Bureau.

* * * * *

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