

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Section 43.62 Reporting Requirements for U.S. ) IB Docket No. 17-55  
Providers of International Services )  
 )  
2016 Biennial Review of Telecommunications ) IB Docket No. 16-131  
Regulations )

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: March 23, 2017**

**Released: March 23, 2017**

**Comment Date: (30 days after publication in the Federal Register)**

**Reply Comment Date: (45 days after publication in the Federal Register)**

By the Commission: Chairman Pai and Commissioners Clyburn and O’Rielly issuing separate statements.

**I. INTRODUCTION**

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on the federal need for the international services reporting requirements set forth in Section 43.62 of the Commission’s rules.<sup>1</sup> Those reporting requirements fall into two categories. First, the Traffic and Revenue Reports require providers of international telecommunications services to report annually their traffic and revenue for international voice services, international miscellaneous services, and international common carrier private lines.<sup>2</sup> Second, the Circuit Capacity Reports require providers of international telecommunications services to file annual reports identifying the submarine cable, satellite, and terrestrial capacity between the United States and foreign points.<sup>3</sup> We believe these reports are no longer necessary in their current form. We propose to eliminate the annual Traffic and Revenue Reports altogether, and seek comment on whether there are ways to further streamline the Circuit Capacity Reports.

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<sup>1</sup> 47 CFR § 43.62; *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, 28 FCC Rcd 575 (2013) (*Part 43 Second Report and Order*); Filing Manual for Section 43.62 Annual Reports (IB Feb. 2016) (*Section 43.62 Filing Manual*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-337916A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-337916A1.pdf).

<sup>2</sup> 47 CFR § 43.62(b).

<sup>3</sup> 47 CFR § 43.62(a).

## II. BACKGROUND

2. The Commission has collected information on international traffic and revenue since 1941.<sup>4</sup> The Commission most recently revised these reporting requirements, set out in Section 43.62 of the Commission's rules, in 2013.<sup>5</sup>

### A. Traffic and Revenue Reports

3. Currently, any person or entity that holds an international Section 214 authorization to provide International Telecommunications Services (ITS)<sup>6</sup> and/or any person or entity that is engaged in the provision of Interconnected Voice over Internet Protocol (VoIP) Services Connected to the Public Switched Telephone Network (PSTN) between the United States and any foreign point<sup>7</sup> (together, Filing Entities) must file an annual Traffic and Revenue Report.<sup>8</sup> The information submitted for this annual report covers: (1) International Calling Service (ICS);<sup>9</sup> (2) International Private Line Service;<sup>10</sup> and (3) International Miscellaneous Services.<sup>11</sup> Each person or entity that holds an international Section 214 authorization, whether or not it provided any ITS during the preceding calendar year, must file at least a registration form and services checklist indicating whether it provided international service the previous year. Filing Entities that only had \$5 million or less in ICS resale revenues need only file the registration form and services checklist. Filing Entities report information on International Miscellaneous Services for which they had \$5 million or more in revenue. The International Bureau has delegated authority to draft a Filing Manual with the instructions for preparing and filing these reports.<sup>12</sup>

4. Historically, the primary role of the international Traffic and Revenue Reports was to monitor settlement rates. The reports were important in the development and enforcement of the Commission's benchmark policy, requiring international settlement rates on particular routes to fall below

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<sup>4</sup> The annual Traffic and Revenue Reports derive from the Commission's 1941 *Order No. 85*, which required U.S. international telegraph carriers to file statistical reports on their international telegraph traffic. In 1964, the Commission added the requirement for carriers to report traffic and revenues for international message telephone service (IMTS). *See Amendment of Part 43 of the Commission's Rules and Regulations, with Respect to the Filing by Common Carriers of Periodic Statistical Reports of Their Overseas Traffic*, 29 Fed. Reg. 13816 (Oct. 7, 1964).

<sup>5</sup> *Part 43 Second Report and Order*, 28 FCC Rcd 575; 47 CFR § 43.62.

<sup>6</sup> ITS refers to telecommunications service between the United States and a foreign point. *Section 43.62 Filing Manual* at Appx. B: Definitions.

<sup>7</sup> Interconnected VoIP Service Connected to the PSTN refers to service between the United States and any foreign point that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet Protocol-compatible customer premise equipment; and (4) permits users generally to receive calls that originate on the PSTN or to terminate calls to the PSTN. *Section 43.62 Filing Manual* at Appx. B: Definitions.

<sup>8</sup> 47 CFR § 43.62(b).

<sup>9</sup> ICS is defined as IMTS and Interconnected VoIP Connected to the PSTN, including International Call Completion Service for IMTS or Interconnected VoIP Connected to the PSTN. *Section 43.62 Filing Manual* at Appx. B: Definitions. IMTS consists of telecommunications services (including voice and low-speed dial-up data) provided over the public switched networks of U.S. international carriers.

<sup>10</sup> International Private Line Service is defined as Private Line Service between the United States and a foreign point. Private Line Service refers to making available to a customer on a common carrier basis a circuit for a specified period of time for the customer's exclusive use. *Id.*

<sup>11</sup> International Miscellaneous Service refers to any international telecommunications service other than ICS and International Private Line Service. *Id.*

<sup>12</sup> 47 CFR § 43.62(d).

competitive benchmarks.<sup>13</sup> As the international telecommunications sector has liberalized and competition has grown, the Commission has determined that most routes were competitive based, in large part, on the Traffic and Revenue Reports; data from these reports thus allowed the Commission to end its International Settlements Policy.<sup>14</sup>

## B. Circuit Capacity Reports

5. The Circuit Capacity Reports help the Commission understand the U.S.-international transport markets.<sup>15</sup> We receive two types of data regarding submarine cables: (1) submarine cable operators report the available and planned capacity of their submarine cable systems<sup>16</sup> and (2) common carriers and submarine cable licensees report the capacity that they own or lease on a submarine cable.<sup>17</sup> The Commission also receives world total circuit data for terrestrial and satellite facilities.<sup>18</sup>

6. The Circuit Capacity Reports show the level of facilities-based competition for the major U.S.-international routes, and can help policy-makers and industry determine whether there is and will be sufficient capacity to handle demand for telecommunications on a specific U.S.-international route. The Commission has used the data in analyzing proposed transactions in the U.S.-international services markets, particularly with respect to whether a transaction would affect facilities-based competition on any particular U.S.-international route(s). The data are used to determine whether entry by foreign companies will benefit or adversely affect competition.

7. The Commission also uses the data for national security and public safety purposes, to ensure that U.S. international telecommunications are safe from disruption, and to provide information about key routes and whether there are alternative cables or satellite facilities available to provide communications to specific locations. The data provide information on ownership and control of submarine cable capacity, to help national security agencies assess the safety and integrity of U.S.-international telecommunications infrastructure.

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<sup>13</sup> *International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997) (*Benchmarks Order*); Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999); *aff'd sub nom. Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999).

<sup>14</sup> See *International Settlements Policy Reform et al.*, IB Docket Nos. 11-80, *et al.*, Report and Order, 27 FCC Rcd 15521 (2012); *International Settlements Policy Reform; International Settlement Rates*, IB Docket Nos. 02-324, 96-261, First Report and Order, 19 FCC Rcd 5709, 5713-15, paras. 9-12 (2004) (2004 ISP Reform Order).

<sup>15</sup> *Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission's Rules*, IB Docket No. 04-112, First Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 7274, 7292-93, para. 49 (2011).

<sup>16</sup> Submarine cable landing licensees are required to file available and planned capacity information for each cable system as of December 31 of the reporting period. 47 CFR § 43.62(a)(2).

<sup>17</sup> Any U.S. international common carrier or cable landing licensee that owned or leased capacity on a submarine cable between the United States and any foreign point on December 31 of the reporting period is required to file capacity amounts for the following categories: (1) owned capacity; (2) net indefeasible rights-of-use (IRUs); (3) net inter-carrier leaseholds (ICLs); (4) net capacity held (*i.e.*, the total of categories (1) through (3)); (5) activated capacity; and (6) non-activated capacity. *Part 43 Second Report and Order*, 28 FCC Rcd at 608, para. 108 and Appx. D at 660-62.

<sup>18</sup> Each facilities-based common carrier is required to file a report showing its active common carrier terrestrial or satellite circuits between the United States and any foreign point as of December 31 of the preceding calendar year. The terrestrial and satellite circuits are reported in world-total counts of 64 kilobits per second (kbps) circuit units. In addition, non-common carrier satellite operators are required to report a world-total count of circuits used by themselves or their affiliates, or sold or leased to any customer as of December 31 of the reporting period, other than to an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See id.*

8. The Commission also uses the terrestrial, satellite, and submarine cable capacity data to administer the annual regulatory fees established in Section 9 of the Communications Act of 1934, as amended (the Act).<sup>19</sup>

### C. Biennial Review

9. On November 3, 2016, the Commission released a Public Notice seeking comment on the 2016 biennial review of our telecommunications regulations pursuant to Section 11 of the Act.<sup>20</sup> Several parties recommend that we further streamline or eliminate the Section 43.62 reporting requirements, and no party wrote in support of retaining these requirements.<sup>21</sup>

10. The United States Telecom Association (USTelecom) notes that the reporting requirements date back to the time of “the highly-regulated monopoly circuit-switched industry of many decades ago.”<sup>22</sup> USTelecom argues that “[i]n contrast, today’s [U.S.] international market is highly competitive and almost completely deregulated, with almost *two thousand* [U.S.] providers of international calling services, including many unregulated (and some very substantial) [U.S.] providers of international VoIP services.”<sup>23</sup>

11. T-Mobile suggests the traffic and revenue reporting requirements for holders of international section 214 authority are outdated, impose “unnecessary compliance costs,” and should be eliminated.<sup>24</sup> CTIA recommends eliminating the Section 43.62(b) Traffic and Revenue Reports, stating that today the market is “robustly competitive” and “these reports serve no apparent purpose, but impose costs on CMRS carriers by requiring them to maintain extensive network systems to track and record international revenue and traffic data.”<sup>25</sup>

<sup>19</sup> 47 U.S.C. § 159; *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, MD Docket No. 16-166, Report and Order, 31 FCC Rcd 10339 (2016) (*FY 2016 Report and Order*). In the *FY 2016 Report and Order*, the Commission announced that it would be initiating a proceeding to review the methodology for assessing terrestrial and satellite international bearer circuit fees. *Id.* at 10343, para. 11.

<sup>20</sup> *Commission Seeks Public Comment in 2016 Biennial Review of Telecommunications Regulations*, IB Docket No. 16-131 *et al.*, Public Notice, 31 FCC Rcd 12166 (2016) (*Biennial Review PN*). Section 11 requires the Commission to (1) review biennially its regulations “that apply to the operations or activities of any provider of telecommunications service,” and (2) “determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.” Section 11 directs the Commission to repeal or modify any regulations that it finds are no longer in the public interest. 47 U.S.C. § 161. The proceeding we initiate here is limited to addressing those issues raised in comments filed in the Biennial Review proceeding regarding the Part 43 rules, and does not otherwise impact the International Bureau’s review of comments filed in response to the *Biennial Review PN*. *Id.*

<sup>21</sup> USTelecom Comments, IB Docket No. 16-131; CTIA Comments, IB Docket No. 16-131; T-Mobile USA, Inc. (T-Mobile) Reply, IB Docket No. 16-131; AT&T Services Inc. Reply (AT&T), IB Docket No. 16-131.

<sup>22</sup> USTelecom Comments at 2, IB Docket No. 16-131.

<sup>23</sup> *Id.* at 2 (emphasis in original).

<sup>24</sup> T-Mobile Reply at 2-3, IB Docket No. 16-131.

<sup>25</sup> CTIA Comments at 11, IB Docket No. 16-131. CTIA cites to Section 43.61(b) of the Commission’s rules. The international traffic and revenue reporting requirements, however, are currently set forth in Section 43.62(b). 47 CFR § 43.62(b); *see Part 43 Second Report and Order*, 28 FCC Rcd at 580, para. 14. *See also* Letters from Brian M. Josef, Assistant Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 16-131 (filed Mar. 15-16, 2017) (summaries of meetings with Office of Chairman Pai, Office of Commissioner Clyburn, Office of Commissioner O’Rielly, and International Bureau). CTIA also urges the Commission to exempt Commercial Mobile Radio Service (CMRS) providers from the requirements of Sections 63.09-63.24 of the Commission’s rules, which set forth the process for carriers to obtain and transfer authorizations under Section 214 of the Act to provide international services. CTIA Comments at 12, IB Docket No. 16-131. We do not address this separate request in this proceeding.

12. AT&T supports USTelecom's comments and suggests that the Commission review Section 43.62 traffic and revenue as well as circuit capacity data collections.<sup>26</sup> AT&T asks the Commission to determine: (1) whether the international traffic and circuit reports required by those rules continue to perform a necessary public interest function in today's highly competitive U.S. international marketplace; and (2) whether any remaining public interest benefits may be obtained more efficiently and effectively in other more targeted ways, such as by requiring the provision of route-specific international traffic information only when any issues requiring such detailed information may occur, rather than by imposing a significant annual reporting burden on all facilities-based international carriers and interconnected VoIP providers.<sup>27</sup> AT&T notes that nearly 300 person-hours are required to prepare its Traffic and Revenue Report.<sup>28</sup>

### III. DISCUSSION

13. After reviewing the record in this biennial review proceeding, and based on our own understanding of the competitive nature of the international services sector, we believe that the international traffic and revenue data collection is no longer necessary, and we propose to eliminate this reporting requirement. We instead believe that more targeted collections, in response to actual U.S. carrier complaints, may provide the Commission with all the information it needs.

14. In contrast, we believe that it might serve the public interest to retain the Circuit Capacity Reports. We thus explore whether, instead of eliminating these reports, there are ways we could streamline or modify this data collection while continuing to meet our statutory obligations.

#### A. Traffic and Revenue Reports

15. We propose to eliminate the current international Traffic and Revenue Reports requirement. We believe that the costs of this data collection—which are significant both for filers and for the Commission—now exceed the benefits of the information. We seek comment on what effect elimination of this reporting requirement will have on U.S. consumers and U.S. carriers, and whether there may be less burdensome ways for the Commission to obtain data in order to fulfill its statutory obligations and protect U.S. interests.

16. The international traffic and revenue reporting requirement appears to place a significant burden on the filing entities and the Commission. Although the Commission does not have firm numbers on the costs to industry to prepare and submit the reports, we have developed estimates of the burdens.<sup>29</sup> In 2016, 1,888 entities filed information regarding their 2015 international traffic and revenue. Of those, 1,822 filed only a registration form and did not file any data because they either did not have any international revenues in 2015, or only had less than \$5 million in ICS resale revenue. Sixty-six filed data for ICS facilities-based services, International Private Line Services and/or International Miscellaneous Services, and 47 of the 66 filed revisions. In 2014, the Commission estimated that filers spend one hour preparing and filing the registration form; two hours preparing and filing world total ICS resale data; 150

<sup>26</sup> AT&T Reply at 1-2, IB Docket No. 16-131. *See also* Letter from Amy L. Alvarez, Assistant Vice President, International External & Regulatory Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, IB Docket Nos. 16-131 and 17-55 (filed Mar. 17, 2017).

<sup>27</sup> AT&T Reply at 1-2, IB Docket No. 16-131.

<sup>28</sup> *Id.* at 3, n.6. *See also* Letter from Amy L. Alvarez, Assistant Vice President, International External & Regulatory Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, IB Docket Nos. 16-131 and 17-55 (filed Mar. 22, 2017) (AT&T Mar. 22, 2017 Ex Parte).

<sup>29</sup> These estimates have been derived by applying the number of traffic and revenue filings in 2016 to the burden estimates in the Paperwork Reduction Act review process for the annual Traffic and Revenue Reports and Circuit Capacity Reports. 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](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201501-3060-002).

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. In total, we estimate that industry spent 14,770 hours preparing and submitting the data for the 2015 annual Traffic and Revenue Reports. We estimate that Commission staff will spend 2,218 hours reviewing and publishing the data at a total cost of at least \$112,076.<sup>30</sup> We seek comment on these estimates and ask commenters to provide us with the cost of preparing and submitting the Traffic and Revenue Reports. In particular, we seek comment on the actual time spent to produce the data and ask commenters to provide us with an average wage rate.<sup>31</sup> We also seek comment on the complexity involved in providing data to the Commission. Do commenters have the information required for filing readily available from their internal systems? Do commenters need to maintain redundant systems or perform complex analysis on their internal data in order to submit their reports? What impact, if any, does the complexity of analysis required have on the reliability of the data submitted?

17. Given the increasing level of competition on most U.S.-international routes, we believe that the benefits of the Traffic and Revenue Reports have so diminished that they no longer outweigh the costs. In the last 20 years, since the implementation of the World Trade Organization (WTO) Basic Telecom Agreement<sup>32</sup> and the establishment of the Commission's benchmarks settlements policy,<sup>33</sup> the international telecommunications sector has become much more competitive on both the U.S. and foreign ends, as government regulations in the United States and abroad were relaxed, and enabled entry. As a result, both U.S.-international average settlement rates and average IMTS<sup>34</sup> 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.<sup>35</sup> Average facilities 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 85 percent in the price to consumers for international calling.<sup>36</sup>

18. Additionally, the data we collect may actually understate the competitiveness of the international market. Although we collect data from interconnected VoIP providers,<sup>37</sup> we do not mandate

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<sup>30</sup> *Id.*

<sup>31</sup> AT&T, for example, reported that nearly 300 hours were required to prepare its Traffic and Revenue Report. AT&T Reply at 3, n.6, IB Docket No. 16-131. *See also* AT&T Mar. 22, 2017 Ex Parte (explaining the 300-hour calculation).

<sup>32</sup> 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) (April 30, 1996), [https://www.wto.org/english/tratop\\_e/serv\\_e/4prote\\_e.htm](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." *See also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market: Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

<sup>33</sup> *Benchmarks Order*, 12 FCC Rcd 19806 (1997).

<sup>34</sup> IMTS is defined as the provision of message telephone service (MTS) between the United States and a foreign point. The term MTS refers to the transmission and reception of speech and low-speed dial-up data over the PSTN. *Section 43.62 Filing Manual* at Appx. B: Definitions. *See also supra* note 9.

<sup>35</sup> FCC, International Bureau Report, 2014 U.S. International Telecommunications Traffic and Revenue Data, Tables 5 and 6 (July 1, 2016) (*2014 Traffic and Revenue Report*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-340121A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-340121A1.pdf) and [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0701/DOC-340121A2.xlsx](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0701/DOC-340121A2.xlsx).

<sup>36</sup> *Id.* at Tbl. 6.

<sup>37</sup> 354 interconnected VoIP providers filed Traffic and Revenue Reports in 2015. *Id.* at 1.

reporting from non-interconnected VoIP providers, many of whose services are free to the customer. This indicates that overall consumer rates for international voice traffic may be below those indicated by the reports. As use of those services continues to increase, it calls into question the continuing value of the overall traffic and revenue data, since such data reveal only a fraction of the overall picture of international communications, a fraction that is likely to grow smaller over time. To the extent information is available, we seek comment on what portion of international telecommunications services is provided by non-interconnected VoIP services, the projected future growth of those services, and their impact on the relevance and accuracy of our current Traffic and Revenue Reports.

19. Settlement rates to most foreign points are also well below the benchmark rate established for that country, indicating that competition has driven the rate closer to cost-based levels. Though some routes are still subject to the anti-competitive effects of foreign monopolist providers and government regulation, for the most part U.S.-international routes are competitive.<sup>38</sup> This is due to relaxed government regulations, entry by 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. Attempts to raise settlement rates by a foreign carrier, cartel, or government can be countered by carriers using our benchmark complaint process, or by consumers switching to VoIP-based calling services, many of which are free. Although the traffic and revenue data have been useful for those times when we have investigated anticompetitive behavior on certain routes, these have been relatively infrequent in recent years.<sup>39</sup> Moreover, we can and do request traffic and revenue information from carriers when a carrier complains of anticompetitive conduct by a foreign carrier or government on a specific route.<sup>40</sup>

20. In eliminating the Traffic and Revenue Reports, is there data and information that the Commission would not be able to obtain to address instances of anticompetitive conduct on a U.S.-international route that adversely affects U.S. consumers or U.S. carriers? How could the Commission ascertain which facilities-based carriers have termination arrangements on a particular U.S.-international route in the absence of reported traffic and revenue data? We seek comment on whether there are less

<sup>38</sup> In a recent presentation to the Expert Group on International Telecommunication Regulations, International Telecommunication Union (ITU), the United States noted that “[a]ccording to the ITU, a clear majority of countries in all six ITU regions have competitive markets covering elements that are essential to the provision of international telecommunication services – domestic fixed long-distance, mobile, leased lines, and international gateways. For example, according to ITU’s 2015 ICT EYE, a majority of countries have various levels of competitive markets in domestic and international long distance services and more than 75 percent of ITU Member States have competitive international gateways and leased line markets.” United States Views on the Review of the International Telecommunication Regulations (Jan. 19, 2017), [https://www.itu.int/dms\\_pub/itu-s/md/17/clegitr1/c/S17-CLEGITR1-C-0002!MSW-E.docx](https://www.itu.int/dms_pub/itu-s/md/17/clegitr1/c/S17-CLEGITR1-C-0002!MSW-E.docx); see also ITU, ICT EYE Key ICT Data & Statistics (Mar. 21, 2017), <http://www.itu.int/net4/itu-d/icteye/>.

<sup>39</sup> For example, on the U.S.-Fiji route (2013 to present), U.S.-Pakistan route (2013-2016), and U.S.-Tonga route (2009 to present). See *Petition for Protection From Anticompetitive Behavior and Stop Settlement Payment Order on the U.S.-Pakistan Route*, IB Docket No. 12-324, Memorandum Opinion and Order, 28 FCC Rcd 2127 (IB 2013); *Petition for Protection From Anticompetitive Behavior and Stop Settlement Payment Order on the U.S.-Pakistan Route*, IB Docket No. 12-324, Memorandum Opinion and Order, 31 FCC Rcd 1175 (IB 2016); *Petition for Enforcement of International Settlements Benchmark Rates on the U.S.-Fiji Route*, IB Docket No. 13-175, Memorandum Opinion and Order, 29 FCC Rcd 2210 (IB 2014); *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, IB Docket No. 09-10, Order and Request for Further Comment, 24 FCC Rcd 8006 (IB 2009); *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, IB Docket No. 09-10, Second Order and Request for Further Comment, 24 FCC Rcd 13769 (IB 2009).

<sup>40</sup> The Commission has broad authority to investigate possible anti-competitive activities on U.S.-international routes. See, e.g., *2004 ISP Reform Order*, 19 FCC Rcd at 5729-34, paras. 41-52; *Benchmarks Order*, 12 FCC Rcd at 19893-96, paras. 185-190.

burdensome alternatives for carriers to provide the Commission with information it needs to protect U.S. consumers and carriers. There are also international routes which are not fully competitive and on which the settlement rate is still above the benchmark rate.<sup>41</sup> We seek comment on whether the Commission should continue to obtain information regarding above-benchmark rates. If so, what information should the Commission continue to require? In addition, for those commenters opposed to eliminating these reporting requirements, we seek comment on how they can be further streamlined<sup>42</sup> and whether the Commission should sunset some or all of the provisions. We seek comment on all the issues raised and solicit additional feedback on any issues we should consider with regard to eliminating the Traffic and Revenue Reports.

## B. Circuit Capacity Reports

21. At this time, we believe that retaining the Circuit Capacity Reports might be warranted because the benefits appear to exceed the costs of collecting this data. We seek comment on our analysis and on ways to further streamline our requirements to minimize the burden on filers while ensuring the Commission receives the information it needs to meet its statutory responsibilities.<sup>43</sup>

22. We seek comment on the burden imposed by our circuit capacity reporting requirements. While the Commission does not have firm numbers on the costs to industry to prepare and submit the reports, we have developed estimates of the burdens.<sup>44</sup> In 2016, 91 entities filed data regarding their circuits as of December 31, 2015. Thirty-five reports were filed for terrestrial and satellite world total circuits; 30 cable operator reports were filed; and 72 capacity holder reports were filed. In 2014, the Commission estimated that filers spend one hour preparing and filing the registration form; one hour preparing and filing world total terrestrial and/or satellite circuits; two hours preparing and submitting the cable operators report; and 10 hours preparing and filing the cable capacity holders report. In total, we estimate that industry spent 906 hours preparing and submitting the data for the 2015 annual Circuit Capacity Reports. We estimate that Commission staff will spend 372 hours reviewing and publishing the data at a total cost of \$22,280. We seek comment on these estimations and ask commenters to provide us with the cost of preparing and submitting the Circuit Capacity Reports. In particular, we seek comment on the actual time spent to produce the data and ask commenters to provide us with an average wage rate.

23. Although the value of the Circuit Capacity Reports is less than it once was with the advent of competition throughout the international marketplace, we believe the reports still retain significant value. For one, the Circuit Capacity Reports give the agency a clear understanding of which operators have deployed what facilities where—the prime information needed for any analysis of facilities-based competition. For another, the Circuit Capacity Reports are used by the Commission and the national security agencies to understand how to protect and secure this critical international infrastructure. For yet another, the Commission relies on these reports to carry out its statutory obligation to assess regulatory fees on international bearer circuits.<sup>45</sup> We believe that these benefits outweigh the

<sup>41</sup> For example, according to 2014 data on calling to foreign fixed-line networks, there are 48 above-benchmark routes that constitute approximately 1 percent of total fixed minutes and 21 percent of total fixed U.S. settlement payouts worldwide. Staff analysis using *2014 Traffic and Revenue Report*.

<sup>42</sup> For instance, requiring only route-by-route data from facilities-based carriers and eliminating the filing requirement for resale, private line, and miscellaneous services would greatly reduce the overall industry burden and would exempt over 1,800 entities from filing Traffic and Revenue Reports.

<sup>43</sup> We propose to delete Section 43.62, which contains both annual Traffic and Revenue Reports and the Circuit Capacity Reports, and place the Circuit Capacity Reports in Section 43.82. See Appendix A.

<sup>44</sup> These estimates have been derived by applying the number of circuit capacity filings in 2016 to the burden estimates in the Paperwork Reduction Act review process for the annual Traffic and Revenue Reports and Circuit Capacity Reports. 2014 Supporting Statement.

<sup>45</sup> 47 U.S.C. § 159(g).

costs of this information collection. We seek comment on this analysis, and how the benefits of the Circuit Capacity Reports can best be quantified.

24. We also seek comment on ways to streamline or improve our reporting requirements. Have there been changes in the international transport markets over the past few years that necessitate a reexamination of the type of information we collect, especially any changes in the submarine cable markets? How should we modify the collection in a manner that would still allow the Commission to meet its obligations? How would the cost benefit analysis change with the proposed modifications? Should we collect different information that would minimize burdens on filers while still providing value to the public, industry, and the Commission? We recognize that the data are used to assess regulatory fees, and seek comment on whether we should require filers to submit, for example, the data at the same time as the fee, rather than as a prelude to the fee. What other ways can the Commission minimize burdens on filers? What, if any, alternative or substitutes for the circuit capacity data, in particular the submarine cable data, are available from commercial sources? If data are available from commercial sources, are there limitations on the Commission's use of that data? We seek comment on this and whether there are alternative lower cost means of acquiring circuit capacity data. We also seek comment on whether we could eliminate the Circuit Capacity Reports, and if so how the Commission could continue to perform the functions that the circuit data enable.

25. We also seek input on two issues that have become apparent with the most recent filing of Circuit Capacity Reports. First, for certain individual cables, we have observed a discrepancy between the capacity reported on the cable operators report and the capacity reported on the cable capacity holders report. For example, occasionally, we find that the cable capacity holders report has higher capacity numbers than the cable operator report for the same cable.<sup>46</sup> What is the cause of such inconsistencies, and how can we best address them?

26. Second, on the cable capacity holders report, filers are asked to report capacity acquired and relinquished via indefeasible rights-of-use (IRUs) or inter-carrier leaseholds (ICLs) *only* in those cases where such transactions are with another reporting entity.<sup>47</sup> Thus, for each entry of capacity acquired by IRU or ICL, there should be a corresponding entry of capacity relinquished; however, this has generally not been the case. Should we address this by clarifying the filing instructions? Or should we change the instructions so that all IRU and ICL transactions must be reported, regardless of whether the other party is also a reporting party?

27. As part of the changes adopted in 2013, filers are allowed to check a box on the registration form to request confidentiality for their data. In the past, the Commission has published information on the current and planned capacity of individual U.S.-international submarine cables.<sup>48</sup> Several cable operators have recently requested confidential treatment for their cable operator data. To minimize burdens, we seek comment on whether, for example, in the future the Commission should publish such data on a consolidated regional (and not cable-specific) basis. We seek comment on whether releasing only regional data to the public, without identifying individual cable operators, will affect the usefulness of the Circuit Capacity Reports, and whether this practice would address concerns operators have regarding the confidentiality of data submitted in such reports.<sup>49</sup>

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<sup>46</sup> In those instances, Commission staff will contact the filers concerning the inconsistencies.

<sup>47</sup> *Section 43.62 Filing Manual* at 27, para. 138.

<sup>48</sup> See, e.g., *2013 Section 43.82 Circuit Status Data*, FCC International Bureau Report, (2015), at 33-34, Tbl. 7-A. [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-334397A2.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-334397A2.pdf); *2014 U.S. International Circuit Capacity Data*, FCC International Bureau Report (2016) T-10 and T-11, Tbl. 6(A). [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-337257A2.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-337257A2.pdf).

<sup>49</sup> We note that the Commission would still have the information on a cable-by-cable basis.

28. Finally, we propose a change to the confidentiality rule for circuit capacity to clarify that requests for confidential treatment will be consistent with Section 0.459 of the Commission's rules,<sup>50</sup> and seek comment on this proposal.

## IV. ADMINISTRATIVE MATTERS

### A. Ex Parte Rules

29. The proceeding this NPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>51</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

### B. Initial Regulatory Flexibility Analysis

30. Pursuant to the Regulatory Flexibility Act (RFA),<sup>52</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and actions considered in this NPRM. The text of the IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>53</sup>

### C. Paperwork Reduction Act

31. This document contains proposed new and modified information collection requirements. The Commission, as a part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see 44*

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<sup>50</sup> 47 CFR § 0.459; *See* Appendix A, proposed 47 CFR § 43.82(b).

<sup>51</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>52</sup> 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No.104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>53</sup> *See* 5 U.S.C. § 603(a).

U.S.C. 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

#### D. Filing of Comments and Reply Comments

32. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

33. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

34. All parties may additionally provide one copy of each pleading electronically or by paper to each of the following:

- (1) David Krech, Associate Chief, Telecommunications and Analysis Division, International Bureau, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554; e-mail [David.Krech@fcc.gov](mailto:David.Krech@fcc.gov).
- (2) Arthur Lechtman, Attorney, Telecommunications and Analysis Division, International Bureau, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554; e-mail [Arthur.Lechtman@fcc.gov](mailto:Arthur.Lechtman@fcc.gov).

#### V. ORDERING CLAUSES

35. 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, and the Cable Landing License Act of 1921, 47 U.S.C. §§ 34-39, and 3 U.S.C. § 301, this Notice of Proposed Rulemaking is ADOPTED.

36. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

### Proposed Rules

Parts 43 and 63 of the Commission's rules are amended as follows:

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

1. The authority citation for Part 43 is amended to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996; Pub. Law 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. 34-39.

2. Section § 43.62 is amended to read as follows:

§ 43.62 [Reserved]

3. Add Section 43.82 to read as follows:

#### **§ 43.82 Circuit Capacity Reports.**

- (a) Not later than March 31 of each year:

(1) *Satellite and Terrestrial Circuits.* Each facilities-based common carrier shall file a report showing its active common carrier circuits between the United States and any foreign point as of December 31 of the preceding calendar year in any terrestrial or satellite facility for the provision of service to an end user or resale carrier, which includes active circuits used by themselves or their affiliates. Each non-common carrier satellite licensee shall file a report showing its active circuits between the United States and any foreign point as of December 31 of the preceding calendar year sold or leased to any customer, including themselves or their affiliates, other than a carrier authorized by the Commission to provide U.S. international common carrier services.

- (2) *International Submarine Cable Capacity.*

(i) 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). Only one cable landing licensee shall file the capacity data for each submarine cable. For cables with more than one licensee, the licensees shall determine which licensee will file the reports.

(ii) 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) 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(b) of the Commission's rules.

(c) Filing Manual. Authority is delegated to the Chief, 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 furnished 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**

4. 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.

5. Section 63.10(c)(2) is amended to read as follows:

(2) File quarterly reports on traffic and revenue within 90 days from the end of each calendar quarter.

6. Section 63.21(d) is amended to read as follows:

(d) Reserved.

7. Section 63.22(e) is amended to replace “§ 43.62” with “§ 43.82.”

## APPENDIX B

### Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). We request written public comments on this IRFA. Commenters must identify their comments as responses to the IRFA and must file the comments by the deadlines provided in this NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>2</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

#### A. Need for, and Objectives of, the Proposed Rules

2. The Commission initiated this NPRM to assess the federal need for the international reporting requirements set forth in Section 43.62 of the Commission's rules.<sup>4</sup> On November 3, 2016, the Commission released a Public Notice seeking comment on the 2016 biennial review of our telecommunications regulations pursuant to Section 11 of the Communications Act of 1934, as amended (the Act).<sup>5</sup> While the Commission streamlined and modernized the Part 43 international reporting requirements in 2013,<sup>6</sup> several parties recommend that we further streamline or eliminate these rules.<sup>7</sup>

3. The objectives of this proceeding are to eliminate, further streamline, or modify the current traffic and revenue reporting requirements and further streamline or modify circuit capacity reporting requirements that apply to carriers providing international services pursuant to Section 43.62 of the Commission's rules. Specifically, the Commission proposes to eliminate the annual Traffic and Revenue Reports, and seeks comment on ways to further streamline the annual Circuit Capacity Reports. After reviewing the record in this biennial review proceeding, and based on our own understanding of the competitive nature of the international services sector, we believe that the international traffic and revenue data collection is no longer necessary, and we propose to eliminate this reporting requirement. We recognize that there may be occasions when we need international services market information, and seek comment on how to obtain this information in the most cost effective and least burdensome way. With respect to the annual Circuit Capacity Reports, we believe they may warrant retention, and do not

<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996) (CWAAA).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> 47 CFR § 43.62; *Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission's Rules*, IB Docket No. 04-112, Report and Order, 28 FCC Rcd 575 (2013) (*Part 43 Second Report and Order*); FCC, International Bureau, Filing Manual For Section 43.62 Annual Reports (IB 2016) (*Section 43.62 Filing Manual*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-337916A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-337916A1.pdf).

<sup>5</sup> See *Commission Seeks Public Comment in 2016 Biennial Review of Telecommunications Regulations*, IB Docket No. 16-131 *et al.*, Public Notice, FCC 16-149 (2016). Section 11 requires the Commission to (1) review biennially its regulations "that apply to the operations or activities of any provider of telecommunications service," and (2) "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." Section 11 directs the Commission to repeal or modify any regulation that it finds are no longer in the public interest. 47 U.S.C. § 161.

<sup>6</sup> See generally *Part 43 Second Report and Order*.

<sup>7</sup> United States Telecom Association (USTelecom) Comments, IB Docket No. 16-131; CTIA Comments, IB Docket No. 16-131; T-Mobile USA, Inc. (T-Mobile) Reply, IB Docket No. 16-131; AT&T Services Inc. (AT&T) Reply, IB Docket No. 16-131.

propose their elimination. We do, however, explore whether there are ways we could further streamline or modify this data collection while meeting our statutory obligations.

4. Currently, Section 43.62(b) requires providers of international services to report annually their traffic and revenue for international voice services, international miscellaneous services, and international common carrier private lines.<sup>8</sup> Section 43.62(a) requires providers of international services to report annually submarine cable, satellite, and terrestrial capacity between the United States and foreign points.<sup>9</sup>

#### B. Legal Basis

5. The proposed action is authorized under 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, and the Cable Landing License Act of 1921, 47 U.S.C. §§ 34-39, and 3 U.S.C. § 301.

#### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by proposed rules, if adopted.<sup>10</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>11</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>12</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>13</sup>

7. The proposals in the NPRM apply to entities providing international common carrier services pursuant to Section 214 of the Act; entities providing 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. 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.

#### 1. Traffic and Revenue Reports

8. The proposals in the NPRM apply to entities providing international common carrier services pursuant to Section 214 of the Communications Act; 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 facilities under Section 309 of the Act; entities licensed to construct and operate submarine cables under

<sup>8</sup> 47 CFR 43.62(b).

<sup>9</sup> 47 CFR § 43.62(a).

<sup>10</sup> 5 U.S.C. § 604(b)(3).

<sup>11</sup> 5 U.S.C. § 601(6).

<sup>12</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>13</sup> Small Business Act, 15 U.S.C. § 632 (1996).

the Cable Landing License Act of 1921 and Executive Order No. 10530, on a common carrier basis; and entities that provide international terrestrial telecommunications services on a common carrier basis (including incumbent local exchange carriers that offer such facilities). At present, Section 43.62 of the Commission's rules requires that each common carrier engaged in providing international telecommunications service, and each person or entity 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, file a report with the Commission showing revenues, payouts, and traffic for such services provided during the preceding calendar year.<sup>14</sup> Section 43.62 also requires all filing entities to file a Registration Form containing information about the filing entity, such as address, phone number, and email address.<sup>15</sup>

9. The proposals in the NPRM 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, as described below, these entities fit into larger categories for which the SBA has developed size standards that provide these facilities or services.

10. **Facilities-based Carriers.** Facilities-based providers of international telecommunications services would fall into the larger category of interexchange carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>16</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>17</sup> U.S. Census data for 2012 indicate that there were 3,117 firms in this category that operated for the entire year.<sup>18</sup> Of that number, 3,083 firms operated with fewer than 1,000 employees, and 34 firms operated with 1,000 employees or more.<sup>19</sup> Thus under this category and the associated small business size standard, the majority of these interexchange carriers can be considered small entities. According to the

<sup>14</sup> 47 CFR § 43.62(b)(2).

<sup>15</sup> 47 CFR § 43.62(c).

<sup>16</sup> U.S. Census Bureau, *2012 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012%20NAICS%20Search> (last visited March 21, 2017). See also U.S. Census Bureau, *2017 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017%20NAICS%20Search> (last visited March 21, 2017).

<sup>17</sup> 13 CFR § 121.201, NAICS code 517110. The 2017 NAICS code for Wired Telecommunications Carriers is 517311. See U.S. Census Bureau, *2017 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017%20NAICS%20Search> (last visited March 21, 2017); U.S. Census Bureau, *Frequently Asked Questions (FAQs)*, <https://www.census.gov/eos/www/naics/faqs.html> (last visited March 21, 2017). While economic census data for 2012 are available, economic census data for 2017 are not currently available.

<sup>18</sup> U.S. Census Bureau, American FactFinder, *Employment Size of Firms for the U.S.: 2012* (Jan. 8, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table) (U.S. Employment Size of Firms Census Table).

<sup>19</sup> *Id.*

Wireline Competition Bureau's *2010 Trends in Telephone Service Report*, 359 companies reported that they were engaged in the provision of interexchange services.<sup>20</sup> Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>21</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by this NPRM.

11. U.S. international service providers report international traffic data for three categories of services: (1) International Calling Service (ICS); (2) International Private Line Service; and (3) International Miscellaneous Services.<sup>22</sup> ICS refers to International Message Telephone Service (IMTS)<sup>23</sup> and International VoIP Service Connected to the PSTN, including International Call Completion Service for IMTS or International VoIP Service Connected to the PSTN.<sup>24</sup> In 2013, the total revenue reported for Facilities IMTS was \$3.9 billion.<sup>25</sup> In 2014, filers reported that they billed, on a world-total basis by routing arrangement, \$3.7 billion for 84.2 billion minutes at an average revenue of \$0.04 per minute for U.S.-billed Facilities ICS traffic.<sup>26</sup> According to the International Bureau's internally developed data, 47 international service providers filed Schedule 1 reporting data for U.S.-Billed Facilities ICS and/or Foreign-Billed Facilities ICS provided during the 2014 reporting year, and 101 international service providers filed Schedule 2 reporting data for U.S.-Billed Facilities ICS and/or Traditional Transiting ICS<sup>27</sup> provided during the 2014 reporting year.<sup>28</sup> Also, 55 international service providers filed Schedule 1 for the 2015 reporting year, and 101 international service providers filed Schedule 2 for the 2015 reporting year.

<sup>20</sup> See FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3: Number of Telecommunications Service Providers by Size of Business (WCB 2010) (*Trends in Telephone Service*).

<sup>21</sup> *Id.*

<sup>22</sup> *Section 43.62 Filing Manual* at 10, para. 42.

<sup>23</sup> IMTS refers to the provision of message telephone service (MTS) between the United States and a foreign point. The term MTS refers to the transmission and reception of speech and low-speed dial-up data over the public switched telephone network (PSTN). *Section 43.62 Filing Manual* at Appx. B: Definitions.

<sup>24</sup> In the *Part 43 Second Report and Order*, the Commission adopted rules requiring that providers of VoIP services connected to the PSTN report their international calling services. The Commission stated that because it is requiring providers of VoIP services connected to the PSTN to report traffic and revenue data that do not fit within the traditional definition of IMTS, the Commission would use ICS to mean both VoIP services connected to the PSTN and IMTS. *See Part 43 Second Report and Order*, 28 FCC Rcd at 580, para 12. Pursuant to the *Part 43 Second Report and Order*, IMTS and VoIP services connected to the PSTN are both included in the ICS data collection for traffic and revenue reporting. *See Section 43.62 Filing Manual* at Appx. D: Traffic and Revenue Report (Services Checklist and Schedules 1-4).

<sup>25</sup> See FCC, International Bureau, 2014 U.S. International Telecommunications Traffic and Revenue Report at Appx. B: Data Tables (IB 2016), <https://www.fcc.gov/reports-research/reports/international-traffic-and-revenue-reports/international-telecommunications> (2014 *Traffic and Revenue Report*).

<sup>26</sup> *Id at 10.*

<sup>27</sup> Traditional Transiting ICS call is an ICS call from a foreign point that (a) transits the United States prior to completion at a foreign point and (b) is settled at a rate agreed upon by the Foreign Service Provider in the origination foreign point and the Foreign Service Provider in the destination foreign point. The U.S. international service provider that provides the transiting service is reimbursed for its handling and transmission of the traffic by the Foreign Service Provider in the origination foreign point. *Section 43.62 Filing Manual* at 13, para. 58.

<sup>28</sup> Entities filing a Traffic and Revenue Report must submit a Services Checklist and check the box(es) that pertain to the service(s) that they provided during the reporting period. Entities must file service data on the corresponding Schedules that apply for each box that is checked (unless the filing entity provided no international telecommunications service or international VoIP service connected to the PSTN). *See id.* at 9, para 41.

12. International Private Line Service refers to private line service between the United States and a foreign point.<sup>29</sup> Private line service refers to making available to a customer on a common carrier basis a circuit for a specified period of time for the customer's exclusive use.<sup>30</sup> According to the *2014 Traffic and Revenue Report*, there were 494 million private lines circuits in 2014.<sup>31</sup> The total customer revenue reported for International Private Line Service in 2014 was \$374 million.<sup>32</sup> According to the International Bureau's internally developed data, 37 international service providers filed Schedule 3 reporting International Private Line Service statistics as "Service Provided over Facilities Circuits" for the 2014 reporting year, and 34 international service providers filed Schedule 3 reporting this information for the 2015 reporting year.<sup>33</sup>

13. International Miscellaneous Service refers to any international telecommunications service other than ICS and International Private Line Service.<sup>34</sup> According to the *2014 Traffic and Revenue Report*, the total customer revenue reported for International Miscellaneous Service in 2014 was \$3.2 billion.<sup>35</sup> According to the International Bureau's internally developed data, 13 international service providers filed Schedule 4 reporting that they billed customers \$5 million or more for any International Miscellaneous Service provided during the 2014 reporting year, and 26 international service providers filed Schedule 4 reporting this information for the 2015 reporting year.<sup>36</sup>

14. **IMTS Resale Providers.** Providers of IMTS resale services are common carriers that purchase IMTS from other carriers and resell it to their own customers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. The U.S. Census Bureau defines this industry as "establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry."<sup>37</sup> The SBA has developed a small business size standard for the category of Telecommunications Resellers, which consists of all such companies

<sup>29</sup> *Id.* at Appx. B: Definitions.

<sup>30</sup> *Id.*

<sup>31</sup> *2014 Traffic and Revenue Report* at 15.

<sup>32</sup> *Id.*; see also *id.* at Appx. B: Data Tables.

<sup>33</sup> Any U.S. International Carrier that provides International Private Line Service through ownership or an indefeasible right of use (IRU), or by obtaining a leasehold interest in the U.S. end of an international facility that is not provided by the lessor as International Private Line Service shall report International Private Line Service statistics for the reporting period on Schedule 3 as "Service Provided over Facilities Circuits." A U.S. International Carrier that provides International Private Line Service by obtaining a lease that is provided by the lessor as International Private Line Service shall report International Private Line Service statistics for the reporting period on Schedule 3 as "Service Provided over Resold Circuits." See *Section 43.62 Filing Manual* at 18, para. 88. According to the International Bureau's internally developed data, 17 international service providers filed Schedule 3 reporting International Private Line Service statistics as "Service Provided over Resold Circuits" for the 2014 reporting year, and 18 international service providers filed Schedule 3 reporting this information for the 2015 reporting year.

<sup>34</sup> *2014 Traffic and Revenue Report* at 16.

<sup>35</sup> *Id.*; see also *id.* at Appx. B: Data Tables.

<sup>36</sup> A U.S. International Carrier that billed less than \$5 million in revenue for an International Miscellaneous Service provided during the reporting period is not required to file data for that service on its Traffic and Revenue Report. *Section 43.62 Filing Manual* at 3, para 10.

<sup>37</sup> U.S. Census Bureau, *2012 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2012%20NAICS%20Search> (last visited March 21, 2017). See also U.S. Census Bureau, *2017 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017%20NAICS%20Search> (last visited March 21, 2017).

having 1,500 or fewer employees.<sup>38</sup> U.S. Census data for 2012 indicates that there were 1,341 firms in this category that operated for the entire year.<sup>39</sup> Of that number, 1,341 operated with fewer than 1,000 employees and none operated with more than 1,000 employees.<sup>40</sup> Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. Consequently, the Commission estimates that the majority of IMTS resellers are small entities that may be affected by our action. In the *2014 Traffic and Revenue Report*, 1,489 carriers reported that they provided ICS on a resale basis during the 2014 reporting year.<sup>41</sup> Of these 1,489 ICS resale carriers, 70 carriers reported, in the aggregate, that they billed customers \$5.9 billion for 96.6 billion minutes.<sup>42</sup> According to the International Bureau's internally developed data, of these 1,489 ICS resale carriers, 1,419 carriers reported that they billed less than \$5 million in revenue, and 70 carriers reported that they billed \$5 million or more in revenue. According to the International Bureau's internally developed data, 1,496 carriers reported that they provided ICS on a resale basis during the 2015 reporting year. Of these 1,496 resale carriers, 1,434 carriers reported that they billed less than \$5 million in revenue, and 62 carriers reported that they billed \$5 million or more in revenue during the 2015 reporting year.

**15. Wireless Carriers and Service Providers.** Included among the providers of IMTS resale are a number of wireless carriers that also provide wireless telephony services domestically. The Commission classifies these entities as providers of Commercial Mobile Radio Services (CMRS). At present, most, if not all, providers of CMRS that offer IMTS provide such service by purchasing IMTS from other carriers to resell it to their customers. The Commission has not developed a size standard specifically for CMRS providers that offer resale IMTS. Such entities would fall within the larger category of wireless carriers and service providers. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

**16. Wireless Telecommunications Carriers (except Satellite).** This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>43</sup> The SBA has developed a small business size standard for the category of

<sup>38</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>39</sup> U.S. Employment Size of Firms Census Table (Jan. 8, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>40</sup> *Id.*

<sup>41</sup> *2014 Traffic and Revenue Report* at 14. ICS Resale refers to the provision of U.S.-Billed ICS by a U.S. international service provider through the resale of ICS purchased from another U.S. international service provider. See *Section 43.62 Filing Manual* at Appx. B: Definitions. Pursuant to the *Part 43 Second Report and Order*, IMTS and VoIP services connected to the PSTN are both included in the ICS data collection for traffic and revenue reporting. See *supra* note 24.

<sup>42</sup> *Id.* Pursuant to the *Part 43 Second Report and Order*, a U.S. international service provider that billed less than \$5 million in ICS Resale revenue and did not bill any Facilities ICS revenue for the reporting period is not required to report data for its ICS Resale on its Traffic and Revenue Report. U.S. international service providers that billed less than \$5 million in ICS Resale revenue and also billed Facilities ICS revenue are required to file data for ICS Resale as well as Facilities ICS. See *Part 43 Second Report and Order*, 28 FCC Rcd at 579-80, para. 12; see also *Section 43.62 Filing Manual* at 2-3, para. 9.

<sup>43</sup> U.S. Census Bureau, *2012 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2012%20NAICS%20Search> (last visited March 21, 2017). See also U.S. Census Bureau, *2017 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search> (last visited March 21, 2017).

Wireless Telecommunications Carriers (except Satellite), which consists of all such companies having 1,500 or fewer employees.<sup>44</sup> For this industry, U.S. Census data for 2012 indicates that there were 967 firms in this category that operated for the entire year.<sup>45</sup> Of that number, 955 firms operated with fewer than 1,000 employees, and 12 firms operated with 1,000 employees or more.<sup>46</sup> Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to the Wireline Competition Bureau's *2010 Trends in Telephone Service Report*, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.<sup>47</sup> Of these 413 companies, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>48</sup> Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small and may be affected by this NPRM.

17. **Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the Wireless Communications Services (WCS) auction as an entity with average gross revenues not exceeding \$40 million for each of the preceding three years, and a "very small business" as an entity with average gross revenues not exceeding \$15 million for each of the preceding three years.<sup>49</sup> The SBA has approved these definitions.<sup>50</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

18. **Providers of Interconnected VoIP services.** Section 43.62 of the Commission's rules requires entities providing international calling service via Voice over Internet Protocol (VoIP) service connected to the public switched telephone network (PSTN) to file a report with the Commission showing revenues, payouts, and traffic for such service.<sup>51</sup> According to the *2014 Traffic and Revenue Report*, 354 interconnected VoIP service providers filed Traffic and Revenue Reports for the 2014 reporting year.<sup>52</sup> The entities that provide such services are a mix of large and small entities. We do not have information

<sup>44</sup> 13 CFR § 121.201, NAICS code 517210. The 2017 NAICS code for Wireless Telecommunications Carriers (except Satellite) is 517312. See U.S. Census Bureau, *2017 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search> (last visited March 21, 2017); U.S. Census Bureau, *Frequently Asked Questions (FAQs)*, <https://www.census.gov/eos/www/naics/faqs/faqs.html> (last visited March 21, 2017). While economic census data for 2012 are available, economic census data for 2017 are not currently available.

<sup>45</sup> U.S. Employment Size of Firms Census Table (Jan. 8, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSS25&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSS25&prodType=table).

<sup>46</sup> *Id.*

<sup>47</sup> See *Trends in Telephone Service* at Table 5.3: Number of Telecommunications Service Providers by Size of Business.

<sup>48</sup> *Id.*

<sup>49</sup> *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>50</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998).

<sup>51</sup> 47 CFR § 43.62(b)(2).

<sup>52</sup> *2014 Traffic and Revenue Report* at 1.

on the size of such VoIP providers.<sup>53</sup> The U.S. Census Bureau addresses VoIP providers in two categories, depending upon whether the service is provided over the provider's own operated wired telecommunications infrastructure, or over client-supplied telecommunications connections (*e.g.*, dial-up ISPs). The former are within the category of Wired Telecommunications Carriers.<sup>54</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>55</sup> U.S. Census data for 2012 indicates that there were 3,117 firms in this category that operated for the entire year.<sup>56</sup> Of that number, 3,083 firms operated with fewer than 1,000 employees, and 34 firms operated with 1,000 employees or more.<sup>57</sup> As a result, for the purpose of this IRFA we consider all such entities to be small entities within the meaning of the SBA. The latter are within the category of All Other Telecommunications.<sup>58</sup> Under SBA rules, the category of All Other Telecommunications has a small business size standard of \$32.5 million or less in annual receipts.<sup>59</sup> For this category, U.S. Census data for 2012 show that there were a total of 1,442 firms that operated for the entire year.<sup>60</sup> Of that number, 1,400 firms had annual receipts of under \$25 million and 15 firms had annual receipts of \$25 million to \$49,999,999.<sup>61</sup> Consequently, we estimate that the majority of VoIP providers are small entities.

**19. Spot Market Operators.** A “spot market” is a market where service providers can buy or sell call completion services for immediate delivery.<sup>62</sup> A spot market customer is a service provider that enters into a contract to buy or sell call completion services by interconnecting at a spot market point of presence.<sup>63</sup> The spot market owner is a person or entity that facilitates the transaction between contracting service providers (who may not know each other’s identity) by physically interconnecting the customers and acting as their commercial intermediary.<sup>64</sup> The Commission has not developed a small

<sup>53</sup> See *supra* note 24.

<sup>54</sup> U.S. Census Bureau, 2012 NAICS Definition, <http://www.census.gov/cgi-bin/ssd/naics/naicsrch?code=517110&search=2012%20NAICS%20Search> (last visited March 21, 2017); *see also* U.S. Census Bureau, 2017 NAICS Definition, <http://www.census.gov/cgi-bin/ssd/naics/naicsrch?code=517311&search=2017%20NAICS%20Search> (last visited March 21, 2017).

<sup>55</sup> 13 CFR § 121.201, NAICS code 517110. The 2017 NAICS code for Wired Telecommunications Carriers is 517311. *See* U.S. Census Bureau, 2017 NAICS Definition, <http://www.census.gov/cgi-bin/ssd/naics/naicsrch?code=517311&search=2017%20NAICS%20Search> (last visited March 21, 2017); U.S. Census Bureau, *Frequently Asked Questions (FAQs)*, <https://www.census.gov/eos/www/naics/faqs.html> (last visited March 21, 2017). While economic census data for 2012 are available, economic census data for 2017 are not currently available.

<sup>56</sup> U.S. Employment Size of Firms Census Table, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table) (last visited March 21, 2017).

<sup>57</sup> *Id.*

<sup>58</sup> U.S. Census Bureau, 2012 NAICS Definition, <http://www.census.gov/cgi-bin/ssd/naics/naicsrch?code=517919&search=2012%20NAICS%20Search> (last visited March 21, 2017); *see also* U.S. Census Bureau, 2017 NAICS Definition, <http://www.census.gov/cgi-bin/ssd/naics/naicsrch?code=517919&search=2017%20NAICS%20Search> (last visited March 21, 2017).

<sup>59</sup> 13 CFR § 121.201, NAICS code 517919.

<sup>60</sup> U.S. Receipts Size of Firms Census Table (Jan. 8, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>61</sup> *Id.*

<sup>62</sup> *Section 43.62 Filing Manual* at 16, para. 74.

<sup>63</sup> *Id.*

business size standard specifically for operators of spot markets. As a result, for purposes of this IRFA, we consider all such entities to be small businesses.

## 2. Circuit Capacity Reports

20. **Providers of International Telecommunications Transmission Facilities.** Section 43.62 of the Commission's rules requires U.S. facilities-based common carriers, non-common carrier satellite operators, cable landing licensees, and U.S. international carriers that owned or leased capacity on a submarine cable between the United States and any foreign point, to annually file circuit capacity data.<sup>65</sup> According to the International Bureau's internally developed data, 85 such entities filed circuit capacity data for the 2014 reporting year, and 91 such entities filed circuit capacity data for the 2015 reporting year.<sup>66</sup> Some of these providers would fall within the category of interexchange carriers, some would fall within the category of Wired Telecommunications Carriers, while others may not. The Commission has not developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>67</sup> The Circuit Capacity Reports do not include employee or revenue statistics, so we are unable to determine how many carriers could be considered small entities under the SBA standard. Although it is quite possible that a carrier could report a small amount of capacity and have significant revenues, we will consider those 85 carriers to be small entities at this time.

21. **Satellite Telecommunications Providers.** Other providers of international transmission facilities are those that operate international common carrier and non-common carrier satellite systems. Such systems provide circuits to providers of international telecommunication services or provide circuits directly to end users. Operators of international satellite services are required to report their aggregate world-wide active circuits in the Circuit Capacity Reports.<sup>68</sup> The Commission has not determined a size standard specifically for operators of international satellite systems that offer circuits directly to end users. However, two economic census categories address the satellite industry. Under SBA rules, the category of Satellite Telecommunications has a small business size standard of \$32.5 million or less in annual receipts.<sup>69</sup> The category of All Other Telecommunications has a size standard of \$32.5 million or less in annual receipts.<sup>70</sup>

22. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or

(Continued from previous page) ——————

<sup>64</sup> *Id.*

<sup>65</sup> 47 CFR § 43.62(a).

<sup>66</sup> Data current as of February 17, 2017. The *2014 U.S. International Circuit Capacity Report* lists 84 U.S. international carriers that filed Circuit Capacity Reports as of the date that the *Report* was released. See FCC, International Bureau, 2014 U.S. International Circuit Capacity Report (IB 2016), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-337257A2.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-337257A2.pdf).

<sup>67</sup> 13 CFR § 121.201, NAICS code 517110. The 2017 NAICS code for Wired Telecommunications Carriers is 517311. See U.S. Census Bureau, *2017 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017%20NAICS%20Search> (last visited March 21, 2017); U.S. Census Bureau, *Frequently Asked Questions (FAQs)*, <https://www.census.gov/eos/www/naics/faqs.html> (last visited March 21, 2017). While economic census data are available for 2012, economic census data for 2017 are not currently available.

<sup>68</sup> *Section 43.62 Filing Manual* at 26, para. 135.

<sup>69</sup> 13 CFR § 121.201, NAICS code 517410.

<sup>70</sup> 13 CFR § 121.201, NAICS code 517919.

reselling satellite telecommunications.”<sup>71</sup> For this industry, U.S. Census data for 2012 indicate that 333 firms operated for the entire year.<sup>72</sup> Of that number, 299 firms had annual receipts of under \$25 million, and 12 firms had annual receipts of \$25 million to \$49,999,999.<sup>73</sup> Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

23. The category of All Other Telecommunications “comprises establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or VoIP services via client-supplied telecommunications connections are also included in this industry.”<sup>74</sup> For this category, U.S. Census data for 2012 show that there were a total of 1,442 firms that operated for the entire year.<sup>75</sup> Of that number, 1,400 firms had annual receipts of under \$25 million and 15 firms had annual receipts of \$25 million to \$49,999,999.<sup>76</sup> Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that may be affected by this NPRM.

24. **Operators of Non-Common Carrier Undersea Cable Systems.** Section 43.62 of the Commission’s rules requires all submarine cable licensees to file data on their circuits on submarine cable facilities.<sup>77</sup> Neither the Commission nor the SBA has developed a size standard specifically for operators of non-common carrier undersea cables. Such entities would fall within the SBA category Wired Telecommunications Carriers. The size standard under SBA rules for that category is that such a business is small if it has 1,500 or fewer employees.<sup>78</sup> U.S. Census data for 2012 indicate that there were 3,117 firms in this category that operated for the entire year.<sup>79</sup> Of that number, 3,083 firms operated with fewer than 1,000 employees, and 34 firms operated with 1,000 employees or more.<sup>80</sup> Thus under this category and the associated small business size standard, the majority of these carriers can be considered small

<sup>71</sup> U.S. Census Bureau, *2012 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517410&search=2012%20NAICS%20Search> (last visited March 21, 2017); *see also* U.S. Census Bureau, *2017 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517410&search=2017%20NAICS%20Search> (last visited March 21, 2017).

<sup>72</sup> U.S. Census Bureau, American FactFinder, *Receipts Size of Firms for the U.S.: 2012* (Jan. 8, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSZ4&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSZ4&prodType=table) (U.S. Receipts Size of Firms Census Table).

<sup>73</sup> *Id.*

<sup>74</sup> U.S. Census Bureau, *2012 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2012%20NAICS%20Search> (last visited March 21, 2017); *see also* U.S. Census Bureau, *2017 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2017%20NAICS%20Search> (last visited March 21, 2017).

<sup>75</sup> U.S. Receipts Size of Firms Census Table (Jan. 8, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSZ4&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSZ4&prodType=table).

<sup>76</sup> *Id.*

<sup>77</sup> 47 CFR § 43.62(a).

<sup>78</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>79</sup> U.S. Employment Size of Firms Census Table (Jan. 8, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSZ5&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSZ5&prodType=table).

<sup>80</sup> *Id.*

entities. Under Section 43.62 of the Commission’s rules, U.S. facilities-based common carriers, non-common carrier satellite operators, cable landing licensees, and U.S. international carriers that owned or leased capacity on a submarine cable between the United States and any foreign point are required to annually file circuit capacity data.<sup>81</sup> According to the International Bureau’s internally developed data, 85 such entities filed circuit capacity data for the 2014 reporting year, and 91 such entities filed circuit capacity data for the 2015 reporting year.<sup>82</sup> We do not have data on the number of employees or revenues of operators of non-common carrier undersea cables. We do know that a number of such entities pay regulatory fees on such circuits, but the names of such entities are confidential. Because we do not have information on the number of employees or their annual revenues, we will consider all such providers to be small entities for purposes of this IRFA.

25. **Incumbent Local Exchange Carriers.** Because some of the international terrestrial facilities that are used to provide international telecommunications services may be owned by incumbent local exchange carriers, we have included small incumbent local exchange carriers in this RFA analysis, to the extent that such local exchange carriers may operate such international facilities. (Local exchange carriers along the U.S.-border with Mexico or Canada may have local facilities that cross the border.) Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange carriers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>83</sup> U.S. Census data for 2012 indicates that there were 3,117 firms in this category that operated for the entire year.<sup>84</sup> Of that number, 3,083 firms operated with fewer than 1,000 employees, and 34 firms operated with 1,000 employees or more.<sup>85</sup> According to the Wireline Competition Bureau’s *Trends in Telephone Service* report, 1,307 carriers reported that they were incumbent local exchange service providers.<sup>86</sup> Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.<sup>87</sup> As noted above, a “small business” under the RFA is one that, among other things, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>88</sup> The SBA’s Office of Advocacy states that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>89</sup> Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by this NPRM. We have therefore included small incumbent local exchange carriers in this RFA analysis, although this RFA action has no effect on Commission analysis and determinations in other,

<sup>81</sup> 47 CFR § 43.6(a).

<sup>82</sup> See *supra* note 66.

<sup>83</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>84</sup> U.S. Employment Size of Firms Census Table (Jan. 8, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSS25&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSS25&prodType=table).

<sup>85</sup> *Id.*

<sup>86</sup> See *Trends in Telephone Service* at Table 5.3: Number of Telecommunications Service Providers by Size of Business.

<sup>87</sup> See *id.*

<sup>88</sup> 15 U.S.C. § 632.

<sup>89</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

non-RFA contexts. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

26. The NPRM proposes a number of rule changes that would affect reporting, recordkeeping and other compliance requirements for entities providing international common carrier services pursuant to Section 214 of the Communications Act; entities providing 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. The NPRM proposes to eliminate, further streamline, or modify the current international reporting requirements to reduce the burdens for both small and large carriers. Specifically, the NPRM proposes to eliminate the annual Traffic and Revenue Reports, and seeks comment on ways to further streamline the Circuit Capacity Reports. As a result, the proposals in the NPRM will be financially beneficial and not impose any significant economic burdens on small carriers.

#### **E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

27. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>90</sup>

28. In this NPRM, the proposed changes in the international reporting requirements would lessen the burden on carriers, including small entities. We propose to eliminate the annual Traffic and Revenue Reports, and seek comment on ways to further streamline the Circuit Capacity Reports. After reviewing the record in this biennial review proceeding, and based on our own understanding of the competitive nature of the international services sector, we believe that the international traffic and revenue data collection is no longer necessary, and we propose to eliminate this reporting requirement. We recognize that there may be occasions when we need international services market information, and seek comment on how to obtain this information in the most cost effective and least burdensome way. We are also considering alternatives that would provide the Commission with important information for fulfilling its statutory obligations but would reduce the burdens on small businesses.<sup>91</sup> With respect to the annual Circuit Capacity Reports, we believe they may warrant retention, and do not propose their elimination. We do, however, explore whether there are ways we could further streamline or modify this data collection while meeting our statutory obligations.

29. The NPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in the NPRM.

30. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding.

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<sup>90</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

<sup>91</sup> See NPRM, paras. 20-23.

**F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules**

31. None.

**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *Section 43.62 Reporting Requirements for U.S. Providers of International Services*, IB Docket No. 17-55; *2016 Biennial Review of Telecommunications Regulations*, IB Docket No. 16-131.

Section 11 of the Communications Act requires the FCC to review every telecommunications regulation on the books every two years and to “determine whether [it] is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.” For many years, the FCC treated this “biennial review” obligation like a check-the-box assignment. Agency staff spent many hours compiling outdated regulations that were ripe for repeal, and the FCC did . . . nothing. I know this because I used to be one of those staffers.

But times are changing. Today, the Commission takes steps to eliminate and streamline two categories of outdated reporting requirements. In response to matters teed up during the 2016 biennial review process, we propose today to eliminate the annual Traffic and Revenue Report and streamline the Circuit Capacity Report, each of which places filing burdens on U.S. providers of international services. And we do this because competition has obviated the original need for these reports, and the cost of these ongoing data collections exceed the benefits to the Commission and companies alike.

For instance, over 1,800 entities had to file information for the 2016 international Traffic and Revenue Report. And countless employees spent thousands of hours to prepare, submit, and analyze this data. Yet the Commission doesn’t need this information in order to discharge its duties. That’s because the marketplace for international communications services is by all accounts competitive. Indeed, that’s why the FCC ended its International Settlements Policy in 2012. It unanimously concluded, based in part on a 2010 traffic report, that the “market has seen significant competitive growth,” making the policy not only superfluous but counterproductive.

And I believe this is now true of the Report itself. It is our hope that the resources currently devoted to complying with these unnecessary reporting requirements will be applied to more productive use—namely, connecting American consumers now and in the future. This is another step toward modernizing our rules and enabling the private sector to deploy infrastructure rather than teams of lawyers and accountants. I hope these proposals will be adopted in the near future.

This doesn’t end our work in this vineyard, though. In this *Notice*, we also seek comment on ways to streamline and improve the reporting requirements related to the Circuit Capacity Reports. For example, we seek input in the *Notice* on the costs of preparing and submitting these reports; whether we should consider changing the information we collect; and whether we can get any necessary data from publicly available commercial sources. Here too we should ensure that reporting requirements are functions of actual need, not agency inertia, and that the benefits of this information collection outweigh the costs.

I’d like to thank the staff of the International Bureau for its hard work on this item, particularly Denise Coca, Kate Collins, Kim Cook, Jerry Duvall, Francis Gutierrez, Gabrielle Kim, David Krech, Heidi Kroll, Arthur Lechtman, Daniel Shiman, Walt Strack, Tom Sullivan, Troy Tanner, Lindsay Tello, and Irene Wu.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *Section 43.62 Reporting Requirements for U.S. Providers of International Services*, IB Docket No. 17-55; *2016 Biennial Review of Telecommunications Regulations*, IB Docket No. 16-131.

As regulators, I believe it is important to regularly assess whether our current reporting requirements are still in the public interest. This is why I support this *Notice of Proposed Rulemaking*, which seeks comment on whether the annual Traffic and Revenue Report and the Circuit Capacity Report, continue to be necessary in their current form. I look forward to reviewing the record that develops and thank the International Bureau staff for your hard work on this item.

## STATEMENT OF COMMISSIONER MICHAEL O'RIELLY

Re: *Section 43.62 Reporting Requirements for U.S. Providers of International Services*, IB Docket No. 17-55; *2016 Biennial Review of Telecommunications Regulations*, IB Docket No. 16-131.

After a four-year absence,<sup>1</sup> it is nice to see Section 11 reviews resurrected at the Commission.<sup>2</sup> For whatever reason, I couldn't seem to get the last Commission to expedite the review process or even the approval process for issuing the simple Public Notice to initiate the review. Despite that bizarre lack of interest and focus, I thank the staff of the International Bureau for suggesting, in response to comments filed in their biennial review docket, that we eliminate the Traffic and Revenue Report and potentially streamline the Circuit Capacity Report.

In preparing this Notice, I appreciate the effort to quantify the costs of these reports using a combination of estimates provided in a past Paperwork Reduction Act (PRA) filing and information about the actual number of reports filed. While not perfect by any stretch of the imagination, at the Notice stage, it does provide some baseline for purposes of comments. It should shock no one to learn that the Commission frequently underestimates the costs of its reporting requirements. In order to help rectify this, I hope that commenters will provide information regarding the true burden of these reports.

The quantitative analysis of potential benefits contained within this document, however, is essentially absent. But this information is necessary as the reason for retaining the Circuit Capacity Report is that the "benefits appear to exceed the costs of collecting this data."<sup>3</sup> Frankly, I am not convinced, at this time, that the Commission should retain this annual reporting requirement. If the information is needed to evaluate the state of competition in the case of a transaction, it appears that we could obtain this information upon request, when necessary. If national security agencies use this information to protect and secure this infrastructure, I will want to ensure that they do not have or cannot get access to this information through other means, making this report unnecessary. And, finally, maintaining such a report for the purpose of collecting regulatory fees is not a convincing argument for keeping this requirement. It is apparent that more work needs to be done here. Generally, I hope that commenters take the time to provide thorough analyses of the reports' benefits, or lack thereof.

In this same vein, this document should be only a first step of many in reducing the paperwork burdens that we place on our regulated entities. For instance, today's item points out that Commission's PRA filing asserts that each filer spends a little more than 150 hours preparing the Traffic and Revenue Report,<sup>4</sup> but one commenter asserts that, in truth, it spent nearly twice as much, or 300 hours.<sup>5</sup> While this

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<sup>1</sup> *2012 Biennial Review of Telecommunications Regulations*, CG Docket No. 13-29, EB Docket No. 13-35, IB Docket No. 13-30, ET Docket No. 13-36, PS Docket No. 13-31, WT Docket No. 13-32, WC Docket No. 13-33, Public Notice, 28 FCC Rcd 11255 (2013); *Commission Seeks Public Comment in 2012 Biennial Review of Telecommunications Regulations*, CG Docket No. 13-29, EB Docket No. 13-35, IB Docket No. 13-30, ET Docket No. 13-36, PS Docket No. 13-31, WT Docket No. 13-32, WC Docket No. 13-33, Public Notice, 28 FCC Rcd 1556 (2013).

<sup>2</sup> 47 U.S.C. § 161.

<sup>3</sup> NPRM, *supra* ¶ 21.

<sup>4</sup> *Id.* ¶ 16 (stating that an additional 50 hours is needed if a revision needs to be filed).

<sup>5</sup> *Id.* ¶ 12 & n.32 (citing Letter from Amy L. Alvarez, Assistant Vice President, International External & Regulatory Affairs, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket Nos. 16-131, 17-55 (Mar. 21, 2017); Reply Comments of AT&T Services, Inc., IB Docket Nos. 16-131 (Jan. 3, 2017)).

is just a drop in the bucket when you consider that the Commission's mandated information collections come to a combined total of about *73 million* hours annually (and this is most likely underestimated), it is at least a start.

I look forward to working with my colleagues and Commission staff to find other information collections that can be combined, shortened or altogether eliminated.