

**FCC FACT SHEET**\*

**Part 43 Reporting Requirements for U.S. Providers of International Services**

Report and Order – IB Docket Nos. 17-55 and 16-131

**Background:** On March 23, 2017, the Commission adopted a Notice of Proposed Rulemaking (NPRM) seeking comment on the need for the two international service reporting requirements set forth in Part 43 of the Commission's rules. The NPRM proposed to eliminate the annual Traffic and Revenue Reports detailing providers' traffic and revenue for international voice services, international miscellaneous services, and international common carrier private lines. The NPRM also sought comment on ways to streamline the annual Circuit Capacity Reports identifying the submarine cable, satellite, and terrestrial capacity between the United States and foreign points.

**What the Order Would Do:**

- **Eliminate the Traffic and Revenue Reports**
  - Based on the increasingly competitive nature of the international services sector, the Order concludes that the filing by providers of annual Traffic and Revenue Reports is no longer necessary, as the costs of this data collection now exceed the benefits of the information.
  - The Commission would instead rely on targeted data collections on an as-needed basis in combination with third party commercial data sources to obtain the information needed to address any anticompetitive concerns that may arise on U.S.-international routes. This approach will impose fewer costs on both international service providers and the Commission.
  - To minimize the burdens of implementing this approach, the item would require each facilities-based international service provider to complete a one-time filing, to be updated as appropriate, listing the routes on which it has termination arrangements with a carrier in the destination foreign country.
  
- **Streamline the Circuit Capacity Reports**
  - The Order would modify this report to reduce the burden on providers by eliminating the requirement that carriers file circuit data for terrestrial and satellite facilities.
  - The Order finds it is in the public interest to retain the remainder of the circuit capacity data collection. The data are necessary for the Commission to fulfill its statutory obligations, including those related to national security and public safety, and will continue to play a vital public interest role for other federal agencies.

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\* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in IB Docket Nos. 17-55 and 16-131, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission's ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. *See* 47 CFR § 1.1200 *et seq.*

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 )

REPORT AND ORDER\*

Adopted: [ ]

Released: [ ]

By the Commission:

TABLE OF CONTENTS

Para.
I. INTRODUCTION..... 1
II. BACKGROUND..... 2
III. DISCUSSION ..... 8
A. Traffic and Revenue Reports ..... 8
B. Circuit Capacity Reports..... 24
C. Transition Issues ..... 37
IV. CONCLUSION ..... 40
V. PROCEDURAL ISSUES ..... 41
A. Regulatory Flexibility Act ..... 41
B. Paperwork Reduction Act of 1995..... 42
C. Congressional Review Act..... 43
VI. ORDERING CLAUSES..... 44
Appendix A – List of Commenters and Reply Commenters
Appendix B – Final Rules
Appendix C – Final Regulatory Flexibility Act Analysis

\* This document has been circulated for tentative consideration by the Commission at its October 2017 open meeting. The issues referenced in this document and the Commission’s ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

## I. INTRODUCTION

1. Today, we reform the international services reporting requirements set forth in Section 43.62 of the Commission's rules<sup>1</sup> by eliminating the annual international Traffic and Revenue Reports<sup>2</sup> and streamlining the Circuit Capacity Reports filed by providers of international services.<sup>3</sup> First, we find that the submission of Traffic and Revenue Reports is no longer necessary as the costs of this data collection now exceed its benefits. In its place, we will rely on commercially available data, along with targeted data collections when necessary, to meet our statutory objectives. Second, we reduce the burdens of the Circuit Capacity Reports, for instance by eliminating the reporting of terrestrial and satellite circuits.

## II. BACKGROUND

2. *Traffic and Revenue Reports.* Since we started collecting the data,<sup>4</sup> the Commission has used international traffic and revenue data for multiple purposes, but our reliance on these reports has substantially diminished over time. The reports were important in the development and enforcement of the Commission's benchmarks policy, which requires U.S. carriers to negotiate international settlement rates at or below benchmark levels established by the Commission.<sup>5</sup> The goal of the policy is to discourage above-cost settlement rates paid by U.S. carriers to foreign carriers.<sup>6</sup> In addition, the reports were useful to the Commission in enforcing the requirements of the International Settlements Policy

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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> Section 43.62(b) requires 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 – the Traffic and Revenue Reports. 47 CFR § 43.62(b). Commission staff publishes an analysis of the data filed by providers in their Traffic and Revenue Reports in a report called U.S. International Telecommunications Traffic and Revenue Data (and its predecessor report called International Telecommunications Data). See FCC, International Traffic and Revenue Report (March 26, 2015), <https://www.fcc.gov/general/international-traffic-and-revenue-report>. We refer to this published report in this Report and Order as the U.S. International Traffic and Revenue Data report.

<sup>3</sup> Section 43.62(a) requires providers of international telecommunications services to file annual reports identifying the submarine cable, satellite, and terrestrial capacity between the United States and foreign points – the Circuit Capacity Reports. 47 CFR § 43.62(a). Commission staff publishes an analysis of the data filed by providers in their Circuit Capacity Reports in a report called U.S. International Circuit Capacity Data (and its predecessor report called the Circuit Status Data Report). See FCC, International Bureau, 2015 U.S. International Circuit Capacity Data (2017), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0829/DOC-346376A2.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0829/DOC-346376A2.pdf) and [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-346376A3.xlsx](https://apps.fcc.gov/edocs_public/attachmatch/DOC-346376A3.xlsx) (2015 U.S. International Circuit Capacity Data report); FCC, International Bureau, 2014 U.S. International Circuit Capacity Data (2016), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-337257A2.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-337257A2.pdf). We refer to the published report in this Report and Order as the U.S. International Circuit Capacity Data report.

<sup>4</sup> See Federal Communications Commission, 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); *Section 43.62 Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations*, IB Docket No. 17-55 and 16-131, Notice of Proposed Rulemaking, 32 FCC Rcd 2606, 2607, para. 4 (2017) (*Section 43.62 NPRM*).

<sup>5</sup> *International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806, 19816, para. 20 (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>6</sup> *Benchmarks Order*, 12 FCC Rcd at 19862-63, para. 115.

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(ISP), which was adopted to prevent foreign telephone monopolists from abusing bottleneck control over the foreign end of U.S. calls to extract unfair concessions from U.S. carriers, thereby harming U.S. carriers and consumers.<sup>7</sup> However, as the international telecommunications sector has liberalized and competition has grown, the Commission determined that most U.S.-international routes were below benchmarks and, in 2012, ended the ISP while maintaining its benchmarks policy.<sup>8</sup>

3. Currently, any person or entity that holds an international Section 214 authorization to provide International Telecommunications Services (ITS)<sup>9</sup> and/or any person or entity that is engaged in the provision of Interconnected Voice over Internet Protocol (VoIP) Services through the Public Switched Telephone Network (PSTN) between the United States and any foreign point<sup>10</sup> (together, Filing Entities) must file an annual Traffic and Revenue Report.<sup>11</sup> The information submitted for this annual report covers: (1) International Calling Service (ICS);<sup>12</sup> (2) International Private Line Service;<sup>13</sup> and (3) International Miscellaneous Services.<sup>14</sup> Commission staff releases the annual U.S. International Telecommunications Traffic and Revenue Data report that analyzes the reported data and provides aggregated data to the public.<sup>15</sup>

4. *Circuit Capacity Reports.* The requirement to file circuit capacity data dates back to the 1970s when it was included as a condition in many of the international section 214 authorizations granted by the Commission.<sup>16</sup> The requirement was subsequently incorporated into the Commission's rules and

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<sup>7</sup> Under the ISP, all U.S. carriers had to be offered: (1) nondiscriminatory termination rates (the same effective rate and same effective date); (2) a proportionate share of return of traffic; and (3) symmetrical settlement rates. *International Settlements Policy Reform et al.*, IB Docket Nos. 11-80 *et al.*, Report and Order, 27 FCC Rcd 15521, 15523, para. 2 (2012) (*2012 ISP Reform Order*).

<sup>8</sup> *2012 ISP Reform Order*, 27 FCC Rcd 15521 (removing the ISP, with a limited exception for the U.S.-Cuba route); *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>9</sup> ITS refers to telecommunications service between the United States and a foreign point. *Section 43.62 Filing Manual* at Appx. B: Definitions.

<sup>10</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>11</sup> 47 CFR § 43.62(b). The Commission most recently revised the reporting requirements set out in Section 43.62(b) of the Commission's rules in 2011. *Part 43 Second Report and Order*, 28 FCC Rcd 575.

<sup>12</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>13</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>14</sup> International Miscellaneous Service refers to any international telecommunications service other than ICS and International Private Line Service. *Id.*

<sup>15</sup> See, e.g., FCC, International Bureau, 2014 U.S. International Telecommunications Traffic and Revenue Data (2016), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0701/DOC-340121A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0701/DOC-340121A1.pdf) (*2014 Traffic and Revenue Report*). See *supra* n.2.

<sup>16</sup> *Rules for the Filing of International Circuit Reports*, CC Docket No. 93-157, Notice of Proposed Rulemaking, 8 FCC Rcd 4902, para. 2 (1993).

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extended to all facilities-based international common carriers<sup>17</sup> and to cable landing licensees.<sup>18</sup> Currently, the Commission receives two types of data regarding submarine cables: (1) submarine cable operators report the available and planned capacity of their submarine cable systems<sup>19</sup> and (2) common carriers and submarine cable licensees report the capacity that they own or lease on a submarine cable.<sup>20</sup> The Commission also receives world total circuit data for terrestrial and satellite facilities.<sup>21</sup>

5. The Circuit Capacity Reports filed by reporting entities provide the Commission with data on the U.S.-international transport markets.<sup>22</sup> The data show the level of facilities-based competition for the major U.S.-international routes.<sup>23</sup> The data also provide information on ownership of submarine cable capacity that is used for national security and public safety purposes.<sup>24</sup> The Commission also uses the terrestrial and satellite circuit data and the 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>25</sup> Additionally, Commission staff releases the annual U.S. International Circuit Capacity Data report that analyzes the reported data and provides aggregated data to the public.<sup>26</sup>

6. *Biennial Review.* On November 3, 2016, the Commission released a Public Notice seeking comment on the 2016 biennial review of its telecommunications regulations pursuant to Section

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<sup>17</sup> *Rules for the Filing of International Circuit Status Reports*, CC Docket No. 93-157, Report and Order, CC Docket No. 93-157, 10 FCC Rcd 8605 (1995) (*1995 Circuit Status Report Order*).

<sup>18</sup> *Part 43 Second Report and Order*, 28 FCC Rcd at 604-8, paras. 100-108.

<sup>19</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>20</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>21</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 Section 43.62 Filing Manual* at 26, para. 135.

<sup>22</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>23</sup> For instance, 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). *See, e.g., Applications of Cable & Wireless Communications Plc and Columbus New Cayman Limited for Transfer of Control of Cable Landing Licenses and Section 214 Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 12730 (IB 2015).

<sup>24</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2608, para. 7.

<sup>25</sup> 47 U.S.C. § 159; *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, MD Docket No. 17-134, Report and Order and Further Notice of Proposed Rulemaking, FCC 17-111 (rel. Sept. 5, 2017) (*FY 2017 Reg Fee Report and Order/FNPRM*).

<sup>26</sup> *See, e.g., 2015 U.S. International Circuit Capacity Data report.*

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11 of the Act.<sup>27</sup> Several parties recommend that the Commission further streamline or eliminate the Section 43.62 reporting requirements, and no party wrote in support of retaining these requirements.<sup>28</sup> Commenters argue that the reporting requirements were not needed in the current competitive international market, including with the availability of VoIP services.<sup>29</sup> Commenters also urge that the reporting imposes unnecessary costs and burdens, and that there are more efficient ways of collecting this data, such as by “requiring the provision of route-specific international traffic information only when any issues requiring such detailed information may occur.”<sup>30</sup>

7. *Section 43.62 NPRM.* In response to the *2016 Biennial Review Public Notice* and the comments received, the Commission adopted the *Section 43.62 NPRM* on March 23, 2017 initiating this proceeding and seeking comment on proposals to eliminate the Traffic and Revenue Reports altogether, and retain but further streamline the Circuit Capacity Reports filed by providers.<sup>31</sup> The Commission also sought comment on the estimates of time and cost of preparing the reports.<sup>32</sup> Twelve parties filed comments and four parties filed reply comments.<sup>33</sup> Additionally, on May 1, 2017, to prevent the providers of international telecommunications services from incurring potentially unnecessary expenses, the International Bureau granted a temporary waiver of the July 31, 2017 Traffic and Revenue reporting requirement until 60 days after release of a Commission Order regarding the reporting requirements.<sup>34</sup>

### III. DISCUSSION

#### A. Traffic and Revenue Reports

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

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<sup>27</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 Public Notice*). 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. As stated in the *Section 43.62 NPRM*, this proceeding 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 Public Notice*. *Section 43.62 NPRM*, 32 FCC Rcd at 2609, para. 9 & n.20.

<sup>28</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>29</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2609-10, paras. 10-12.

<sup>30</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2609-10, paras. 10-12.

<sup>31</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2606, 2610, paras. 1, 15.

<sup>32</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2611, 2613. paras. 16, 22.

<sup>33</sup> The list of commenters and reply commenters is in Appendix A.

<sup>34</sup> *Section 43.62 Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations*, IB Docket No. 17-55 and 16-131, Order, 32 FCC Rcd 3765 (IB 2017).

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9. In the *Section 43.62 NPRM*, the Commission proposed to eliminate the requirement on providers to file annual Traffic and Revenue Reports, based on estimates that the costs of this data collection now exceed the benefits of the information.<sup>35</sup> The *Section 43.62 NPRM* provided an estimate of the costs associated with the Traffic and Revenue Reports data collection, but also sought comment from industry on the actual time spent to produce the data and the complexity in providing the data to the Commission.<sup>36</sup> The Commission also sought comment on what effect elimination of this reporting requirement would 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. consumers and carriers.<sup>37</sup>

10. All of the commenters in the proceeding support the elimination of the Traffic and Revenue Reports filed by providers.<sup>38</sup> Commenters maintain that the reports are complex, costly, and take significant time to produce.<sup>39</sup> Verizon and AT&T argue that the Commission underestimated the burdens associated with preparing and filing the reports.<sup>40</sup> For example, AT&T asserts that its “preparation of the Traffic and Revenue Report and performance of associated tasks require approximately four times the 203 hours the Commission has estimated for this work.”<sup>41</sup> Several commenters contend that there are additional costs and burdens associated with the information collection not reflected in the Commission’s initial estimates because they must gather data from various independent systems and consolidate that data to prepare the reports.<sup>42</sup>

11. Based on our review of the record in this proceeding, we agree with the commenters that there are significant costs to prepare and file the Traffic and Revenue Reports. We conduct our cost-benefit analysis here using a “breakeven analysis,” in which we determine how large the benefits would

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<sup>35</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2610, para. 15.

<sup>36</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2611, para. 16.

<sup>37</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2610, para. 15.

<sup>38</sup> AT&T Comments at 1 (“AT&T therefore strongly supports this proposal to remove the annual international Traffic and Revenue report.”); CTIA Comments at 1 (“CTIA commends the Commission for proposing to eliminate the international traffic and revenue reports, as CTIA and other suggested in response to the 2016 Biennial Review Public Notice.”); ICIO Comments at 1; Inmarsat Comments at 1; Iridium Comments at 1; SD Comments at 1; Sprint Comments at 1; T-Mobile Comments at 3; TNZI USA Comments at 2; USTelecom Comments at 2; Verizon Comments at 1; VON Coalition at 1.

<sup>39</sup> AT&T Comments at 3; CTIA Comments at 2; Inmarsat Comments at 2; SD Comments at 1; T-Mobile Comments at 6; USTelecom Comments at 2; Verizon Comments at 2; VON Coalition Comments at 3; TC America Reply Comments at 3.

<sup>40</sup> Verizon claims that it required three times that FCC estimate, at 600 hours. Verizon Comments at 2-3. Iridium states that the registration form took four times the Commission’s estimate, at 4 hours. Iridium Comments at 2. *See also* AT&T Comments at 3; U.S. Telecom Reply at 5-6. Sprint, on the other hand, asserts that the Commission’s estimate was not unreasonable. Sprint Comments at 2.

<sup>41</sup> AT&T reports that the total hours required for facilities-based filing for itself and several other AT&T affiliates required approximately four times the FCC estimate, at 790 hours. AT&T Comments at 3-5.

<sup>42</sup> CTIA Comments at 2; Inmarsat Comments at 2; USTelecom Comments at 2-3; T-Mobile Comments at 6.

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need to be to exceed the estimated costs.<sup>43</sup> Based on that review, we conclude that the annual social benefits attributable to the Traffic and Revenue Reports no longer exceed their estimated social cost.<sup>44</sup>

12. In 2016, 1,957 entities filed information regarding their 2015 international traffic and revenue.<sup>45</sup> Based on the Commission's previous estimates<sup>46</sup> and on the record before us, our best estimate of the industry-wide cost of collecting and filing the traffic and revenue data in 2016 ranges from \$604,415 to \$1,203,160.<sup>47</sup> In addition, the cost to the Commission to review the submitted data and publish the U.S. International Telecommunications Traffic and Revenue Data report in 2015, the last year the Commission released a public report, was approximately \$112,076.<sup>48</sup> Thus, we estimate the overall annual cost of collecting and publishing the Traffic and Revenue Reports to be in the range of \$716,491 to \$1,315,236.

13. We also find, given the increasing level of competition on most U.S.-international routes, that the benefits of the reports have so diminished that they no longer outweigh those costs. As T-Mobile

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<sup>43</sup> Numerous sources address the structure and techniques for conducting cost-benefit analyses. See, e.g., Richard O. Zerbe, Jr., and Dwight D. Dively, *Benefit-Cost Analysis in Theory and Practice* (1994); W. Kip Viscusi, John M. Vernon, and Joseph E. Harrington, *Economics of Regulation and Antitrust*, 4<sup>th</sup> ed. (2005); Clifford Winston, "Economic Deregulation: Days of Reckoning for Microeconomists," 31 *Journal of Economic Literature* 1263, 1270 (1993); Office of Management and Budget, Office of the President, OMB Circular A-4, [https://www.whitehouse.gov/omb/circulars\\_a004\\_a-4](https://www.whitehouse.gov/omb/circulars_a004_a-4) (Sept. 17, 2003). We need not address these standards in any more detail to reach decisions in this proceeding.

<sup>44</sup> The social benefit is the total benefit to society from providing the reports and the social cost is the total cost to society of producing them, including the private costs to industry and the Commission of collecting the data and producing a report.

<sup>45</sup> Of the 1,957 entities, 1,801 filed a registration form without any data because they either did not have any international revenues in 2015 or had less than \$5 million in ICS resale revenue. Seventy-five filed data for route-specific ICS facilities-based services and facilities-based International Private Line Services. Eighty-one filed only the world ICS resale data, resale private line services, and/or International Miscellaneous Services.

<sup>46</sup> We use an estimate of the average burden for the filing entities. For example, the burden estimate should be higher than the actual burden for entities with facilities-based service on a few routes and lower than the burden on entities with worldwide facilities-based services, such as AT&T and Verizon. In 2014, the Commission estimated that on average filers spend one hour preparing and filing the registration form; two hours preparing and filing world total International Calling Service (ICS) resale data; 150 hours preparing and submitting route-by-route data for facilities-based ICS and or international private lines; and 50 hours preparing and filing revised data. The Commission estimated the hourly cost at \$35 per hour. See OMB Control Number 3060-1156, ICR Ref. No. 201501-3060-002, FCC Supporting Statement at 11-13 (2014) (2014 Supporting Statement), [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201501-3060-002](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201501-3060-002).

<sup>47</sup> In estimating the costs, we use a range of hours to account for the differences between entities serving a few routes and those with worldwide service. Based on the very general evidence in the record, we choose 406 hours as the upper limit of the range to approximately reflect the potentially higher number of hours that a few large carriers, such as AT&T and Verizon, reportedly need. We use a range of one to two hours to fill out, verify, and submit the registration form. This approach accounts for Iridium's criticism that filling out a registration form may require examining the firm's data to ensure that it is appropriate, and having an attorney check the form for accuracy. At the low end of our range, the total number of hours to prepare and submit the data for industry is 17,269 hours (1,801 + 243 + 15,225). At the high end of our range, the total number of hours is 34,376 hours (3,602 + 324 + 30,450). Multiplying these figures by the hourly wage of \$35 per hour yields a range of \$604,415 to \$1,203,160 for the total cost to industry of producing the data.

<sup>48</sup> 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). In the *Section 43.62 NPRM*, the Commission estimated that staff would spend 2,218 hours reviewing and publishing the data at a total cost of at least \$112,076. *Section 43.62 NPRM*, 32 FCC Rcd at 2610-11, para. 16.

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notes, “[t]he Commission first started collecting international traffic and revenue data in 1941 – over 75 years ago – when the market for international communications service was entirely different.”<sup>49</sup> When the requirement for carriers to file Traffic and Revenue Reports was established, there was little competition in the international telecommunications markets and the reports were an important tool for the Commission to monitor the markets. The data from the reports were instrumental in developing Commission policies and actions that protect U.S. carriers and consumers from anticompetitive conduct and high settlement rates, including the development of the benchmarks policy.

14. Circumstances have changed substantially over the years, however. As the Commission discussed in the *Section 43.62 NPRM*, since the implementation of the World Trade Organization (WTO) Basic Telecom Agreement 20 years ago<sup>50</sup> and the establishment of the Commission’s benchmarks policy,<sup>51</sup> the international telecommunications sector has become much more competitive on both the U.S. and foreign ends.<sup>52</sup> The Commission explained that “[t]his 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.”<sup>53</sup>

15. For the sector as a whole, U.S.-international average settlement rates and average ICS revenue per minute have dropped dramatically. As illustrated in Figure 1 below, 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>54</sup> Another indicator that competition has driven down rates is that settlement rates to most foreign points are well below the benchmark rate established for that country, with the majority of minutes of calling on highly competitive routes with low settlement rates.<sup>55</sup> Seventy-five percent of routes were below benchmark in 2014, a rise from three percent in 1997, and these constituted 98.7 percent of total minutes of international ICS calling from the United States.<sup>56</sup> In 2014, 75 percent of all

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<sup>49</sup> T-Mobile Comments at 3.

<sup>50</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) (*Foreign Participation Order*), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

<sup>51</sup> *Benchmarks Order*, 12 FCC Rcd 19806.

<sup>52</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2611, para. 17.

<sup>53</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2612, para. 19.

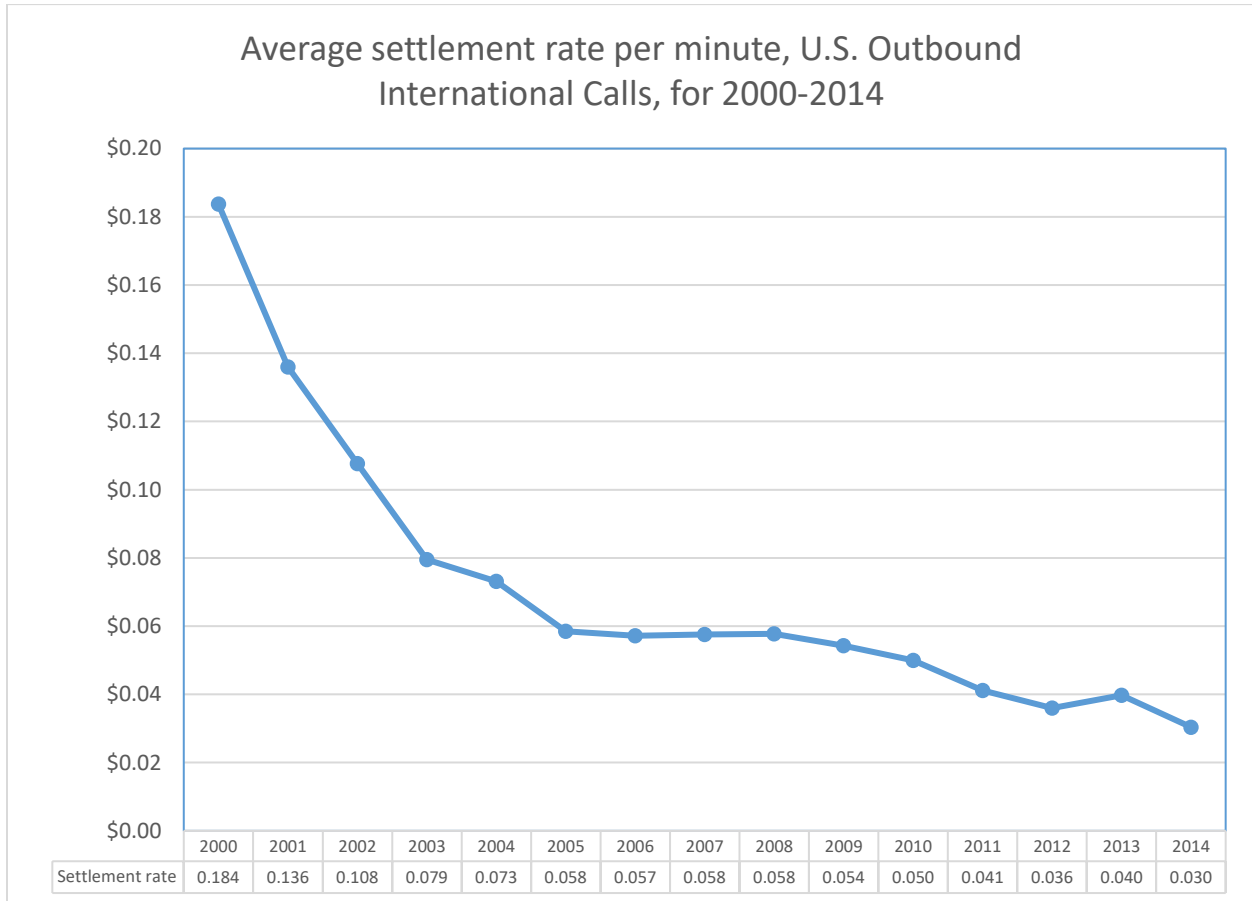
<sup>54</sup> *2014 Traffic and Revenue Report* at Tbls. 5 and 6.

<sup>55</sup> Seventy five percent of all minutes were on routes that had settlement rates below \$0.02. Seventy five percent of routes were below benchmark in 2014, a rise from three percent in 1997, and these constituted 98.7 percent of total minutes of international ICS calling from the United States.

<sup>56</sup> Total settlement payments above each country’s benchmark rate (counting only payments for that portion of the settlement rate above the benchmark, if any) were \$211 million. *Id.* The highest benchmark of \$0.23 per minute was applied to new countries and routes for purposes of this analysis. The benchmarks do not necessarily reflect the current cost of termination, and individual routes may have lower or higher costs of termination. The cost of termination has fallen significantly since 1997, and thus the benchmark rates for many routes are probably higher than the actual cost of termination of international ICS calls.

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minutes were on routes that had settlement rates below \$0.02.<sup>57</sup> Average facilities-based ICS revenue per minute, which is a general measure of international calling prices, has decreased from \$0.47 per minute in 2000 to \$0.04 per minute in 2014, indicating a drop of 91 percent in the price to consumers for international calling.<sup>58</sup>



16. The Traffic and Revenue Reports are also no longer comprehensive, given the nature of the international telecommunications sector today. As CTIA notes, the data collection “likely understates the competitiveness of the marketplace given other providers, such as non-interconnected VoIP, that are not subject to the reporting requirement.”<sup>59</sup> Consequently, the data reveal only a portion of the overall picture of international communications, a portion that is likely to grow smaller over time as more consumers use non-interconnected VoIP and other alternative technologies that are not included as part of the traffic settled with foreign carriers and therefore are not included in the Traffic and Revenue Reports. We note that the Commission can use commercially available data to obtain a more complete picture of

<sup>57</sup> While only 30 percent of routes were below the settlement rate of \$0.05 per minute in 2014, these constituted 88 percent of the total minutes.

<sup>58</sup> 2014 Traffic and Revenue Report at Tbl. 6.

<sup>59</sup> CTIA Comments at 3.

(continued....)

the international communications marketplace, including non-interconnected VoIP.<sup>60</sup> For these reasons and in light of the alternatives available when and where issues may arise, we conclude that the Traffic and Revenue Reports are no longer beneficial or necessary, and we eliminate this annual filing requirement from our rules.

17. We recognize, however, that a number of routes are still not competitive and have not seen the reduction in settlement rates or calling rates that come from competition.<sup>61</sup> As the Commission noted in the *Section 43.62 NPRM*, 48 routes have settlement rates above their respective benchmark rates. These routes account for only about one percent of the total minutes terminated on fixed networks, but represent almost 21 percent of the total fixed U.S. settlement payouts worldwide.<sup>62</sup> In the future, should any issue arise, such as potential anticompetitive conduct on these or other routes, the Commission has broad authority to investigate such issues.<sup>63</sup>

18. The Commission has an established process for identifying and addressing issues of alleged anticompetitive conduct on U.S.-international routes, including the increase of settlement rates above the appropriate benchmark rate for the route.<sup>64</sup> That process provides an opportunity for U.S. carriers to file complaints or petitions, as well as for the Commission to act on its own motion.<sup>65</sup> As part of that process, the Commission has used the annual traffic and revenue data, requested data from carriers, and sought public comment on allegations of anticompetitive conduct. In the *Section 43.62 NPRM*, the Commission specifically sought comment on how to obtain data and information to address instances of anticompetitive conduct on a U.S.-international route that adversely affects U.S. consumers or U.S. carriers if the annual traffic and revenue reports are eliminated.<sup>66</sup>

19. Commenters suggest that use of targeted data requests is a better method of obtaining data than maintaining the Traffic and Revenue Reports.<sup>67</sup> For example, T-Mobile asserts that “[i]n rare

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<sup>60</sup> For example, an enterprise license for TeleGeography Report and Database is approximately \$25,000. TeleGeography, <http://www2.telegeography.com/telegeography-report-and-database>. As opposed to our analysis of the social benefits of Circuit Capacity Reports as a public good, we find such benefits associated with the Traffic and Revenue Reports to be relatively minimal.

<sup>61</sup> Consistent with economic theory and Commission precedent, we treat each international route as a separate market. See *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, 7287-88, para. 32 (2011).

<sup>62</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2613, para. 20, n.41.

<sup>63</sup> 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. See also *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) (*2013 Pakistan Order*); *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) (*2016 Pakistan Order*).

<sup>64</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 *2013 Pakistan Order*, 28 FCC Rcd 2127; *2016 Pakistan 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>65</sup> See *2012 ISP Reform Order*, 27 FCC Rcd at 15537-40, paras. 37-49.

<sup>66</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2612, para. 20.

<sup>67</sup> Verizon Comments at 4-5; ICIO Comments at 19.

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event that a complaint is filed, any necessary information about the specific route may be gathered at that time.”<sup>68</sup> To enable the Commission to identify which service providers operate on which international routes, the International Cable and Infrastructure Operators (ICIO)<sup>69</sup> support a requirement obligating carriers to identify the services they provide and the routes they service as an alternative to the annual Traffic and Revenue Reports requirement.<sup>70</sup> Similarly, AT&T notes that it would not object to providing the Commission, on a confidential basis, a list of routes on which it has termination arrangements with a carrier in the destination foreign country.<sup>71</sup> Commenters contend that industry data can also be obtained through commercial sources.<sup>72</sup> For example, USTelecom recommends TeleGeography as it “provides interested parties with international voice traffic data for 72 countries on over 1,000 routes, current retail, wholesale, and interconnection rates, as well as information regarding the impact of consumer VoIP (*i.e.*, OTT) services.”<sup>73</sup>

20. We agree with commenters that the Commission can continue to use targeted data requests to international service providers when necessary in combination with data from third party commercial sources,<sup>74</sup> which is a less burdensome but effective way of achieving our statutory objectives.<sup>75</sup> Through these means, we should be able to obtain any necessary information for merger review and investigations of possible anticompetitive conduct on U.S.-international routes. However, to ensure this targeted data request process is efficient, the Commission must maintain a list of the particular routes that entities serve. This list of routes should be readily available to service providers as each provider negotiates a contract in the normal course of business. Additionally, we are not aware of this information being otherwise available from third party commercial sources and this information will be less burdensome than filing the annual Traffic and Revenue Reports. This list will provide the Commission with information, for example, to identify the service providers it may need to seek information on any anticompetitive issue that arises in a particular region or on a particular route. Importantly, this list will also inform the Commission as to which service providers should not be subject to a data request.

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<sup>68</sup> T-Mobile Comments at 5.

<sup>69</sup> ICIO members identified in its comments are The North American Submarine Cable Association, DOCOMO Pacific, Inc., Globe Telecom, Inc. GTI Corporation, and Level 3 Communications, LLC. ICIO Comments at 1-5.

<sup>70</sup> ICIO Comments at 20.

<sup>71</sup> AT&T Comments at 11.

<sup>72</sup> ICIO notes that “there is a wide variety of sources – for example, TeleGeography, Fierce Telecom, Telecomramblings and Telecompaper (to name just a few) that make accurate and current industry information readily available.” ICIO Comments at 19. USTelecom Comments at 10-11; Verizon Comments at 3-4.

<sup>73</sup> USTelecom Comments at 11.

<sup>74</sup> USTelecom argues that “the outdated information available in the Commission’s Traffic and Revenue report pales in comparison to the various private sources of such information available to both industry and the Commission. These various sources can – and do – provide the Commission an industry with much more comprehensive and timely information.” USTelecom Comments at 10-11.

<sup>75</sup> Section 43.62 NPRM at 19 (“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.”). Verizon asserts that if “in the course of review the Commission requires specific data for a particular investigation, it has mechanisms by which it can request data maintained in the ordinary course.” Verizon Comments at 4. BT notes that “information can be provided instead on an as-needed and more targeted basis that will adequately address the Commission’s need for this information.” BT Reply Comments at 1-2.

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21. Consequently, we will require international facilities-based service providers to submit, and maintain, a list of routes on which they have direct termination arrangements with a foreign carrier.<sup>76</sup> We delegate authority to the International Bureau to establish the specific process for the filing of the lists. Carriers with existing direct termination arrangements must submit their list within thirty (30) days after the International Bureau releases a public notice with the procedures for filing. Thereafter, service providers must update their lists within thirty (30) days after they add a termination arrangement for a new foreign destination or discontinue arrangements with a previously listed destination. A new service provider or one without existing direct termination arrangements must file its list within 30 days of entering into a direct termination arrangements with a foreign carrier.

22. We will not, however, treat the lists as presumptively confidential, as AT&T requests.<sup>72</sup> AT&T asserts that “the Commission has previously recognized the confidentiality of information relating to U.S. providers’ termination arrangements following the removal of the ISP, except where the Commission specifically provides otherwise, and it should apply such confidential treatment here.”<sup>77</sup> We find, however, that the confidential information AT&T references in 0.457(d)(v) relates to the “rates, terms and conditions *in* any arrangement between a U.S. carrier and a foreign carrier,”<sup>78</sup> not the fact that such an arrangement exists. Additionally, we find that AT&T has not established that such a list warrants confidential treatment. We have in the past consistently treated such information as public information,<sup>79</sup> and neither AT&T nor other parties offer any reasons or changed circumstances to warrant a different approach. Moreover, we find that providing a public list would not cause substantial competitive harm to carriers, as the information does not disclose any rates, terms or conditions within the termination arrangements. This approach will allow the Commission to send public letters of inquiry in a docket or proceeding to investigate a potential anticompetitive issue on a particular U.S.-international route. It will also allow the Commission to ensure that potentially affected U.S. carriers offering service on a particular route are notified of an issue that might affect them. Our decision not to treat the lists as presumptively

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<sup>76</sup> Routes on which the U.S. carrier has no arrangement with a carrier in the destination market and instead provides service to that market through arrangements with third party carriers in intermediate countries would not be included on the list.

<sup>72</sup> AT&T Comments at 11.

<sup>77</sup> AT&T Comments at 12, n.19 (*citing* 47 CFR § 0.457(d)(v)).

<sup>78</sup> 47 CFR § 0.457(d)(v) (*emphasis added*).

<sup>79</sup> *See, e.g., Petition for Protection From Anticompetitive Behavior and Stop Settlement Payment Order on the U.S.-Pakistan Route*, Memorandum Opinion and Order, 28 FCC Rcd 2127, 2128, n.5 (IB 2013) (“the following carriers serve the U.S.-Pakistan route: AT&T, MCI, Sprint, Bharti Airtel, France Telecom, iBasis/KPN, IDT Corp., New Century, Pacifica Telecom/ITE, Primus Telecomm, Reach Services, Reliance Communications, Telecom Colombia USA, Telecom Italia Sparkle, Telecom New Zealand, Telstra, and Telia Sonera.”); *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, 8009, n.29 (IB 2009) (“The Bureau sent information requests to carriers that, according to the most recent information filed with the Commission, serve the U.S.-Tonga route other than the petitioner, AT&T. Those carriers were: MCI International, Sprint Nextel Corporation, Bharti Airtel Limited, France Telecom Long Distance USA, LLC, IDT Corporation, IT&E Overseas, Inc., KDDI America, Inc., KPN International Network Services, Inc., New Century InfoComm Tech Co. Ltd., Primus Telecommunications, Inc., REACH Services (USA) Inc., Telecom New Zealand, USA, Inc., and TeliaSonera AB. The information request asked for information concerning: whether the carrier provides facilities-based service on the route; whether the carrier had direct circuits to Tonga; whether any direct circuits on the route were disrupted; and whether the carrier provided service on the route through alternative operating arrangements.”); *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, 2213, n.21 (IB 2014).

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confidential does not preclude parties from requesting confidential treatment of a particular filing pursuant to Section 0.459 of the Commission's rules.<sup>80</sup>

23. Based on the record and considering changing market conditions, we find that the Traffic and Revenue Reports are no longer necessary. We anticipate that, in combination with access to commercially available international telecommunications market data, the use of targeted information requests will allow the Commission to continue to fulfill its statutory obligations and protect U.S. interests. Such information requests will be targeted for specific situations,<sup>81</sup> and could include any information previously reported for the Traffic and Revenue Report – e.g., minutes completed on foreign networks; settlement payouts for call completion on foreign networks; foreign-billed minutes; and, foreign-billed settlement receipts. Each request will be targeted to relevant U.S. carriers based upon the facilities-based service provider's list of routes. Any requests for confidentiality in response to such a Commission request should be made in accordance with Section 0.459 of the Commission's rules.<sup>82</sup>

### **B. Circuit Capacity Reports**

24. Based on the record in this proceeding, we find it is in the public interest to retain the circuit capacity data collection with some modifications to streamline and reduce the burdens on providers.<sup>83</sup> We conclude that the identified social benefits of the Circuit Capacity Reports filed by providers significantly exceed the estimated social cost of producing these reports.<sup>84</sup> The data from the Circuit Capacity Reports are necessary for the Commission to fulfill its statutory obligations and will continue to play a vital public interest role for other federal agencies. As explained below, we find that we are able to streamline this information collection, and we will no longer require carriers to file world total circuit data for terrestrial and satellite facilities.

25. In the *Section 43.62 NPRM*, the Commission asserted that retaining the Circuit Capacity Reports might be warranted because the benefits appear to exceed the costs of collecting this data.<sup>85</sup> The Commission noted that the reports retain significant value and are used for analysis of the international transport market, for national security purposes, and to assess regulatory fees on international bearer circuits.<sup>86</sup> The *Section 43.62 NPRM* sought comment on whether “there are ways we could streamline or modify this data collection while continuing to meet our statutory obligations.”<sup>87</sup> For instance, the *Section 43.62 NPRM* noted that the circuit capacity data are used to assess regulatory fees but asked

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<sup>80</sup> 47 CFR § 0.459.

<sup>81</sup> In individual cases where merger review analysis and monitoring and enforcement of our benchmarks requires data, we can obtain those data from targeted data requests to the parties and other industry stakeholders. In addition, the traffic and revenue data are no longer necessary because the Commission can rely on commercial data sources and targeted data requests for any internal data analysis that it needs to perform.

<sup>82</sup> 47 CFR § 0.459.

<sup>83</sup> We delete Section 43.62, which contains both annual Traffic and Revenue Reports and the Circuit Capacity Reports, and place the revised Circuit Capacity Reports in Section 43.82. See Appendix B.

<sup>84</sup> The social benefit is the total benefit to society from providing the reports, and the social cost is the total cost to society of producing them, including the private costs to industry and the Commission of collecting the data and producing a report.

<sup>85</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2613, para. 21.

<sup>86</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2613, para. 23.

<sup>87</sup> *Section 43.62 NPRM*, 32 FCC Rcd 2606, 2613, paras. 1, 21.

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parties to comment on whether parties could submit the data relevant to fees as part of the fee submission process rather than through their Circuit Capacity Reports.<sup>88</sup>

26. Those commenters that address the Circuit Capacity Reports all request that the reports be eliminated, arguing that the burdens outweigh the benefits.<sup>89</sup> For instance, USTelecom urges the Commission to go beyond mere streamlining and eliminate the reports because “[l]ike the Traffic and Revenue Report, the Circuit Capacity Reports are a vestige of a bygone era, are equally burdensome to carriers, and of limited value to both the Commission and industry.”<sup>90</sup> The Department of Homeland Security (DHS), on the other hand, finds this information to be critical to its national and homeland security functions.<sup>91</sup> Certain parties also disagree with our estimates of the costs associated with Circuit Capacity Reports. AT&T estimates that preparing the reports requires more than nine times the 13 hours estimated by the Commission,<sup>92</sup> while Verizon claims that the Commission’s estimate is understated by nearly a factor of ten.<sup>93</sup>

27. As we did with the Traffic and Revenue Reports, we conduct our cost-benefit analysis of the Circuit Capacity Reports using a “breakeven analysis.” Based on that review, we conclude that the social value of the social benefits of the Circuit Capacity Reports filed by providers significantly exceeds the estimated social cost of producing the reports. The *Section 43.62 NPRM* estimated that industry as a whole spent 906 hours preparing and submitting the 2015 Circuit Capacity Reports.<sup>94</sup> We find, however, that we can streamline the circuit capacity data collection, which will decrease the cost to both industry and the Commission without jeopardizing our ability to fulfill our statutory mandates. We will eliminate the requirement to report terrestrial and satellite circuits which will reduce burdens on industry without impairing the Commission’s ability to fulfill its statutory duties. We also find that going forward the International Bureau can cease preparing and releasing public reports analyzing the data provided in the Circuit Capacity Reports, but should continue to maintain the data and publicly release aggregated data on a timely basis. Based on the record, we estimate that with these changes the annual economic cost for filing entities to compile and submit circuit capacity data to the Commission would be between \$30,065 and \$37,605,<sup>95</sup> and in the *Section 43.62 NPRM* we estimated the annual economic cost to the Commission

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<sup>88</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2614, para. 24.

<sup>89</sup> AT&T Comment at 2 (“The international Circuit Capacity Report is also burdensome and appears to provide little useful information to serve the purposes identified in the Notice that cannot be provided more effectively in more targeted and less costly ways.”); ICIO Comments at 11; Inmarsat Comments at 4; Sprint Comments at 1; T-Mobile Comments at 3, n.8; Verizon Comments at 5; VON Comments at 4; TC Reply Comments at 1; SES Reply Comments at 1.

<sup>90</sup> USTelecom Comments at 11.

<sup>91</sup> Letter from Emily Early, Director (Acting), DHS NPPD Strategy, Policy, and Plans, Office of Cyber and Infrastructure Analysis, National Protection and Program Directorate, DHS, to Marlene Dortch, Secretary, FCC, dated September 21, 2017 (*DHS Sept. 21 Ex Parte Letter*).

<sup>92</sup> AT&T claims that its burden is approximately 120 hours. AT&T Comments at 6.

<sup>93</sup> Verizon claims that the Commission’s estimate is understated by nearly a factor of ten, implying a burden of approximately 140 hours. Verizon Comments at 5.

<sup>94</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2613, para. 22.

<sup>95</sup> The *Section 43.62 NPRM* estimated that, in total, the industry spent 906 hours preparing and submitting circuit capacity data for the 2015 U.S. *International Circuit Capacity Data* report. See *Section 43.62 NPRM*, 32 FCC Rcd at 2613, para. 22. This includes 30 hours for preparing and filing world total terrestrial and/or satellite circuits, a requirement which the Commission has eliminated in this Report and Order, and 17 hours for preparing and filing the registration form by 17 filing entities that only submitted reports for the terrestrial and/or satellite circuits, a requirement which the Commission has similarly eliminated. Subtracting 47 hours—the amount of time by which the reporting burden is reduced under the Commission’s revised rules—from the estimated total of 906 hours yields

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for reviewing the data and producing the public report is approximately \$22,000, which will decrease going forward because we will no longer publish an annual public report.<sup>96</sup> Thus, the total annual economic cost of the reporting requirement, including the overestimate for producing the annual report using Commission resources of \$22,280 per year and the resources expended by the filing entities valued at \$37,305 per year, equals no more than \$59,885.

28. We find that the benefits to the Commission in collecting this data justify the estimated costs of the collection. The Commission currently uses the circuit capacity data for such purposes as analyzing international transport markets in merger reviews.<sup>97</sup> More importantly, these data are essential for our national security and public safety responsibilities in regulating communications, an important linchpin of the Commission's statutory authority.<sup>98</sup> A number of commenters questioned the usefulness of this information for national security purposes, arguing that the Commission and the national security agencies already know the owners, capacity, and locations of the submarine cables through the licensing process and that by the time the public reports are released the data are no longer useful.<sup>99</sup> However, submarine cables are critical infrastructure and the circuit capacity data are important for the Commission's contributions to the national security and defense of the United States. More than 95 percent of all U.S.-international voice, data, and Internet traffic is carried over submarine cables, including civilian and military U.S. Government traffic.<sup>100</sup> Submarine cables are used for critical government and business operations, communications, financial transactions, logistics, and transportation.<sup>101</sup> Threats to submarine cables include deliberate attacks, accidents and natural disasters.<sup>102</sup> To maintain the integrity of this critical part of our communications infrastructure,

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a revised total of 859 hours. Adjusting these figures to eliminate the burden of reporting the terrestrial and/or satellite circuits and to avoid double counting AT&T's and Verizon's burdens, and adding the results to the estimated total of 859 hours yields a revised industry total of 1,074.4 hours annually. The estimated total variable cost per year for filing entities is derived by multiplying the total hours by \$35 per hour, the estimated in-house hourly wage for filing entities cited in the Commission's supporting statement on Part 43.62 annual reporting requirements. 2014 Supporting Statement at 12. This calculation produces a range of annual total variable cost for all entities filing circuit capacity data with the Commission from \$30,065 to \$37,605.

<sup>96</sup> The *Section 43.62 NPRM* estimates that Commission staff spends 372 hours annually reviewing and publishing the annual circuit capacity report for a total variable cost of \$22,280. *Section 43.62 NPRM*, 32 FCC Rcd at 2613, para. 22.

<sup>97</sup> The Commission focuses on submarine cable facilities when analyzing the international transport market. *See Part 43 Second Report and Order*, 28 FCC Rcd at 602-3, paras. 93-94.

<sup>98</sup> The Communications Act of 1934 established the Commission "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio . . . for the purpose of the national defense . . ." 47 U.S.C. § 151 (charging the Commission with regulating communications by wire and radio for, among other things, the national defense). The Cable Landing License Act of 1921 and Executive Order 10530, also require that we consider national security concerns in our licensing and regulation of cable landing licensees. 47 U.S.C. § 35. Exec. Order No. 10530, 19 Fed. Reg. 2709 (May 10, 1954). While we coordinate as necessary and appropriate with the relevant Executive Branch agencies and accord deference to their expertise in identifying and interpreting issues of concern related to national security and other issues, we make independent decisions on matters within our responsibilities, which can be based in part on concerns raised by the Executive Branch agencies. *See Foreign Participation Order*, 12 FCC Rcd at 23918-21, paras. 59-66).

<sup>99</sup> ICIO comments at 14; USTelecom Comments at 13-14.

<sup>100</sup> *See* Communications, Security, Reliability, and Interoperability Council (CSRIC) IV, Final Report – Protection of Submarine Cables Through Spatial Separation at 1 (2014), [http://transition.fcc.gov/pshs/advisory/csric4/CSRIC\\_IV\\_WG8\\_Report1\\_3Dec2014.pdf](http://transition.fcc.gov/pshs/advisory/csric4/CSRIC_IV_WG8_Report1_3Dec2014.pdf) ("CSRIC IV Report").

<sup>101</sup> CSRIC IV Report at 1.

<sup>102</sup> CSRIC IV Report at 2.

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information about capacity holdings, which are not static but change over time, is central to fulfilling the Commission's responsibilities. We use the data, for example, to have a complete understanding of the ownership and use of submarine cable capacity and to assist in the protection, restoration, and resiliency of the infrastructure during national security or public safety emergencies, such as hurricanes. DHS also finds this information to be critical to its national and homeland security functions.<sup>103</sup> It states that this information, when combined with other data sources, is used to protect and preserve national security and for its emergency response purposes.<sup>104</sup> Although the Commission obtains the ownership and location of individual cables through the licensing process, distribution of a cable's capacity among providers is not required to be reported under our current submarine cable licensing rules and is provided only annually through the Circuit Capacity Reports. Further, the Commission's licensing rules do not require an applicant to include the entities that have acquired capacity on the cable through an Indefeasible Right of Use (IRU) or Inter-Carrier Lease (ICL). While in the past the circuit capacity data often have been dated by the time the Commission's public reports have been released, the Commission has had access to the data when filed and has used those data before the public report is released. In addition, going forward the Commission intends to make the data available to the public on a timelier basis by releasing the aggregate data without any analysis.<sup>105</sup> We find that these benefits of the Circuit Capacity Reports, although difficult to monetize, clearly outweigh the minimal costs to industry and the Commission.

29. Based on our review, we find that there are no alternative reliable third party commercial sources for the reported data.<sup>106</sup> Although some sources collect general capacity information from cable owners,<sup>107</sup> neither we nor DHS have not found any alternative sources for capacity holder data.<sup>108</sup> For example, TeleGeography's submarine cable reports include capacity information, but the data are not verified by company officials<sup>109</sup> and do not include capacity holder data. We find that the social benefits of collecting the data for the Commission's analysis of international transport markets and contributions to the national security, defense, and public safety exceed the costs of producing, collecting, and analyzing the circuit capacity data.<sup>110</sup> Accordingly, we retain the collection of these data.

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<sup>103</sup> *DHS Sept. 21 Ex Parte Letter* at 1.

<sup>104</sup> *DHS Sept. 21 Ex Parte Letter* at 1-2.

<sup>105</sup> An ancillary benefit of releasing aggregated circuit capacity data (and disaggregated data as appropriate) to the public is the benefit that companies may also rely on the data, at no cost, for example, to advise potential entrants about the likely effects on market concentration and competitive effects if market entry is attempted. In addition, the circuit capacity data support theoretical and empirical research on long-term trends in the international telecommunications industry and help analysts detect structural changes that may foreshadow future regulatory change, including but not limited to specific deregulatory reforms and rule revisions that encourage or protect competition. We anticipate some long-term social benefits from research on industry evolution supported by the availability of the circuit capacity data to telecommunications industry analysts and academic researchers.

<sup>106</sup> Although certain cable capacity data may be available through other sources, those sources are not as reliable as information that has been submitted to a federal agency and verified by officials in the company. As for the capacity holder data, there are no other sources for that information. *DHS Sept. 21 Ex Parte Letter* at 2.

<sup>107</sup> The data on submarine cable capacity by region that the Commission collects and makes available provide potential entrants or new investors with an accurate industry overview showing where cable capacity connecting the U.S. to foreign points is presently deployed. The data provide potential new entrants, investors, and other small business entities with business planning data for assessing potential market demand.

<sup>108</sup> *See DHS Sept. 21 Ex Parte Letter* at 2.

<sup>109</sup> An officer of the Filing Entity must certify the accuracy and completeness of the Filing Entity's section 43.62 information. *Section 43.62 Filing Manual* at 7, para. 32.

<sup>110</sup> In addition, the Circuit Capacity Reports provide capacity and ownership data useful in the Commission's review of proposed mergers of international submarine cable operators. The data in the Circuit Capacity Reports filed by

(continued....)

30. We reject arguments that the Commission does not have authority to collect circuit capacity data.<sup>111</sup> The Commission has authority to grant – and condition – authorizations and licenses. Specifically, Section 214 of the Communications Act gives the Commission authority to “attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require.”<sup>112</sup> The Cable Landing License Act of 1921 and Executive Order 10530 authorize the Commission to condition licenses “upon such terms as are necessary to assure just and reasonable rates and service in the operation and use of the cables so licensed.”<sup>113</sup> The requirement for common carriers to file circuit data dates back to the 1970s,<sup>114</sup> and was extended to cable landing licensees in 2013.<sup>115</sup>

31. Although we retain the Circuit Capacity Reports, we find that there are ways in which we can further streamline the data collection to reduce the burdens on industry and the Commission while continuing to collect the data necessary to fulfill our statutory obligations. Commenters argue that we should eliminate the requirement for filing terrestrial and satellite circuit data because the data serve no purpose other than for administering regulatory fees and the requirement is duplicative of data that carriers must file in the Commission’s regulatory fee process.<sup>116</sup> We acknowledge that the Commission only uses this circuit data for regulatory fee purposes,<sup>117</sup> and revise our rules to discontinue collecting terrestrial and satellite circuit information in the Circuit Capacity Reports. We note that the Commission has a pending proceeding on the methodology for assessing regulatory fees for terrestrial and satellite

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

<sup>111</sup> Letter from Kent Bressie, counsel for the International Carriers and Infrastructure Owners, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 17-55 and 16-131, Attach. At 2 (filed Aug. 31, 2017) (*ICIO Aug. 31 Ex Parte Letter*).

<sup>112</sup> 47 U.S.C. § 214(c).

<sup>113</sup> 47 U.S.C. § 35.

<sup>114</sup> *1995 Circuit Status Report Order*, 10 FCC Rcd 8605, para. 2 (1995).

<sup>115</sup> In requiring cable landing licensees to file circuit data for subcables, the Commission explained in the Part 43 Second Report and Order that:

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

*Part 43 Second Report and Order*, 28 FCC Rcd at 606, para 104 (footnotes omitted).

<sup>116</sup> ICIO Comments at 13; Inmarsat Comments at 4-6; USTelecom Comments at 14.

<sup>117</sup> The Commission included that requirement to report terrestrial and satellite circuits solely for purposes of administering regulatory fees. *Part 43 Second Report and Order*, 28 FCC Rcd at 603, paras. 95-6.

(continued....)

international bearer circuits in a more efficient and less burdensome manner.<sup>118</sup>

32. We decline, however, to eliminate the required breakdown of net capacity by cable ownership, as suggested by Verizon.<sup>119</sup> Cable landing licensees and common carriers (collectively, capacity holders) are currently required to break down the capacity that they hold on a cable by whether it is held as ownership in the cable, an IRU, or an ICL.<sup>120</sup> This information is not available from other sources. We find that this breakdown of how the capacity is held is necessary for analyses of critical submarine cable infrastructure and decline to make this change.<sup>121</sup> However, we can reduce the burden on the capacity holders, and do so here, by no longer requiring capacity holders to determine whether the entity from which they acquired a lease or to whom they sell a lease is another capacity holder or similar entity.<sup>122</sup> Accordingly, we direct the International Bureau to revise the Filing Manual to reflect this change.

33. We also decline to eliminate the requirement for submarine cable operators to report the planned capacity of the cable.<sup>123</sup> Cable operators are required to report the intended capacity of the cable two years out from the reporting date based on the planned upgrades to the cable.<sup>124</sup> We find that the planned capacity information is necessary for analyses of critical submarine cable infrastructure and thus decline to make this change.<sup>125</sup> Similarly, we will continue to require cable landing licensees to report the capacity they hold on all submarine cables on which they hold capacity, and not just on those on which they are licensees.<sup>126</sup> Many cable landing licensees hold capacity on cables on which they are not licensees. This information is necessary for analyses of critical submarine cable infrastructure and thus we decline to make this change.<sup>127</sup>

34. We do make certain changes recommended by ICIO to improve the current reporting to encourage more accurate data and to reflect changes in the submarine cable market. First, ICIO argues that allowing only one licensee to file the Cable Capacity Report for a consortium cable requires licensees to share information about their capacity and planned upgrades that may be competitively sensitive.<sup>128</sup> We agree that the consortium cable reporting requirement raises issues requiring modification of our

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<sup>118</sup> *FY 2017 Reg Fee Report and Order/FNPRM* at paras. 44-48.

<sup>119</sup> Verizon Comments at 8.

<sup>120</sup> *Part 43 Second Report and Order*, 28 FCC Rcd at 604-5, 608, paras. 100, 108. *See also* Filing Manual at 27-28, para. 138.

<sup>121</sup> *See DHS Sept. 21 Ex Parte Letter*.

<sup>122</sup> Currently each capacity holder nets out IRUs and ICLs sold to U.S. cable landing licensees and U.S. common carriers, which file their own reports, but does not net out capacity sold to other capacity holders, which requires it to determine whether the entity to which it sold capacity is required to file its own capacity holders report. *Section 43.62 Filing Manual* at 27, para. 138.

<sup>123</sup> Verizon Comments at 8.

<sup>124</sup> *Part 43 Second Report and Order*, 28 FCC Rcd at 606, 608, paras. 105, 108. *See also* Filing Manual at 27, para. 137.

<sup>125</sup> *See DHS Sept. 21 Ex Parte Letter* at 1.

<sup>126</sup> VON Coalition Comments at 4 (“The VON Coalition respectfully maintains that this requirement should be narrowed so as to establish that VoIP and other non-common carriers need file capacity reports only with respect to those submarine cables for which they hold a license.”)

<sup>127</sup> By continuing to require both cable landing licensees and common carriers to report their capacity on all cables we will continue to receive data from the majority of holders of capacity on the cables. *See Part 43 Second Report and Order*, 28 FCC Rcd at 605, para. 102.

<sup>128</sup> *ICIO Aug. 31 Ex Parte Letter*, Attachment at 2-3.

(continued...)

rules. We therefore remove the requirement in the rules that only one licensee file the capacity for each submarine cable from the rule, and direct the International Bureau to consult with stakeholders on appropriate changes to the Filing Manual to allow for more than one licensee to file a cable operator report for a submarine cable if appropriate. Second, ICIO argues that the capacity holders report fails to consider how capacity is sold in the market today.<sup>129</sup> It states that in addition to sales through IRUs and ICLs, capacity is now sold on a fiber pair or spectrum basis. We recognize that the way that capacity is provisioned and sold is constantly changing, but the Commission requires disaggregated capacity holder information about submarine cables capacity. We direct the International Bureau to consult with stakeholders and to review and revise as needed the categories of ownership interests reported in the cable capacity holder reports to reflect changes in industry's provisioning of capacity, while ensuring that the capacity holder data are accurately captured by our reporting requirements.

35. In the *Section 43.62 NPRM*, the Commission proposed to change the confidentiality rule for circuit capacity to clarify that requests for confidential treatment will be consistent with Section 0.459 of the Commission's rules<sup>130</sup> and sought comment on the proposal.<sup>131</sup> There were no comments filed on the issue. We find that it is appropriate to align the rules regarding requests for confidential treatment of information filed in the Circuit Capacity Reports with existing Commission rules on the matter. As such, we adopt the proposal to require that requests for confidential treatment must be consistent with Section 0.459 of the Commission's rules.

36. Finally, we find it unnecessary to amend our systems and processes to enable certifying officers to review and certify the report in a uniform, printable and recordable manner, as suggested by Verizon.<sup>132</sup> The current system already allows the printing of a filing summary that can be reviewed by the filing entity prior to filing.<sup>133</sup>

### C. Transition Issues

37. To prevent the providers of international telecommunications services from incurring potentially unnecessary expenses, on May 1, 2017, the International Bureau granted a temporary waiver of the Traffic and Revenue reporting requirements until 60 days after release of a Commission Order regarding the reporting requirements.<sup>134</sup> As discussed above, we have decided to eliminate the Traffic and Revenue Reports. Consequently, in the event that the actions taken herein to eliminate permanently this information collection are not effective within 60 days of the release of this Report and Order, we find good cause to extend the waiver for filing the 2016 international traffic and revenue data, which would have been due on July 31, 2017, until the deletion of this requirements is effective.<sup>135</sup>

38. As discussed above, we adopt a rule requiring each international facilities-based service provider to file with the Commission a list of the routes on which it has direct termination arrangements

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<sup>129</sup> *ICIO Aug. 31 Ex Parte Letter*, Attachment at 3.

<sup>130</sup> 47 CFR § 0.459.

<sup>131</sup> *Section 43.62 NPRM*, 32 FCC Rcd at 2615, para. 28.

<sup>132</sup> Verizon Comments at 9.

<sup>133</sup> The online system allows a filer to print out a "filing summary," which can easily be saved as a PDF, from an Internet browser. A filer can click on "filing summary" in the upper right hand corner of any page of the online system. The "filing summary" also includes links to the data templates submitted by the filer. As the filer progresses through the filing, the "filing summary" is updated automatically.

<sup>134</sup> *Section 43.62 Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations*, IB Docket No. 17-55 and 16-131, Order, 32 FCC Rcd 3765 (IB 2017).

<sup>135</sup> 47 CFR § 1.3.

with a foreign carrier for that route.<sup>136</sup> Carriers with existing direct termination arrangements must submit their lists within thirty (30) days after the International Bureau releases a public notice with the procedures for filing. The lists shall be filed electronically in accordance with instructions to be issued by the International Bureau.

39. Finally, we direct the International Bureau to revise the Filing Manual to implement the modifications to the circuit capacity reporting requirements discussed above.<sup>137</sup> The International Bureau shall issue a public notice seeking comment on the revised Filing Manual, and we delegate authority to the International Bureau, as needed, to delay the March 31, 2018 filing date for the Circuit Capacity Reports (for the data as of December 31, 2017) until the issuance of a revised Filing Manual.

#### **IV. CONCLUSION**

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

#### **V. PROCEDURAL ISSUES**

##### **A. Regulatory Flexibility Act**

41. Pursuant to the Regulatory Flexibility Act (RFA),<sup>138</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities by the policies and actions in this Report and Order. The text of the FRFA is set forth in Appendix C. The Commission will send a copy of the Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>139</sup>

##### **B. Paperwork Reduction Act of 1995**

42. This Report and Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which include most businesses with fewer than 25 employees, in the FRFA in Appendix C.

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<sup>136</sup> Appendix B, 47 CFR § 63.22(h).

<sup>137</sup> *See supra* at paras. 32, 34.

<sup>138</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>139</sup> *See* 5 U.S.C. § 603(a).

**C. Congressional Review Act**

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

**VI. ORDERING CLAUSES**

44. 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 Report and Order is ADOPTED.

45. IT IS FURTHER ORDERED that parts 1, 43, and 63 of the Commission's rules are AMENDED as set forth in Appendix B.

46. IT IS FURTHER ORDERED that this Report and Order SHALL BE effective 30 days after publication in the Federal Register, except those provisions that contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act WILL BECOME EFFECTIVE after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.

47. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****List of Commenters and Reply Commenters****Commenters**

AT&T Services, Inc. (AT&T)

CTIA

Inmarsat, Inc. (Inmarsat)

Iridium Carrier Services LLC (Iridium)

The North American Submarine Cable Association, DOCOMO Pacific, Inc., Globe Telecom, Inc. GTI Corporation, and Level 3 Communications, LLC (ICIO)

Satcom Direct, Inc., Satcom Direct Communications, Inc., and COMSAT, Inc. (SD)

Sprint Corporation (Sprint)

T-Mobile USA, Inc. (T-Mobile)

TNZI USA LLC (TNZI USA)

United States Telecom Association (USTelecom)

Verizon

The Voice On the Net Coalition (VON Coalition)

**Reply Commenters**

BT Americas Inc. (BT)

SES S.A. and Intelsat License LLC (SES and Intelsat)

Tata Communications America Inc. (TC America)

United States Telecom Association (USTelecom)

**APPENDIX B****Final Rules**

Parts 1, 43, and 63 of the Commission's rules are amended as follows:

**PART 1—PRACTICE AND PROCEDURE**

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

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

2. Section 1.767(g) is amended by adding 1.767(g)(13) as follows and re-designating 1.767(g)(13)-(15) as 1.767(g)(14)-(16).

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

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

3. The authority citation for Part 43 continues to read as follows:

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

4. Remove and reserve Section 43.62.

**§ 43.62 [Removed and Reserved]**

5. Add Section 43.82 to read as follows:

**§ 43.82 Circuit Capacity Reports.**

(a) *International Submarine Cable Capacity.* Not later than March 31 of each year:

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

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

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

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

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

6. 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.

7. 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. Such reports shall include the minutes completed on foreign networks; settlement payouts for call completion on foreign networks; foreign-billed minutes; and, foreign-billed settlement receipts.

8. Remove and reserve Section 63.21(d).

(d) [Removed and Reserved].

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

10. Section 63.22 is amended by adding 63.22(h) as follows and re-designating 63.22(h) as 63.22(i).

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

**APPENDIX C****Final Regulatory Flexibility Act Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Section 43.62 NPRM*.<sup>2</sup> The Commission sought written comment on the proposals in the *Section 43.62 NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objectives of, the Order**

2. The Report and Order reforms the international services reporting requirements set forth in Section 43.62 of the Commission's rules. Specifically, it eliminates the annual Traffic and Revenue Reports. In its place, the Commission will rely on targeted data requests when necessary to take action against possible anticompetitive and other concerns on particular U.S.-international routes. Additionally, to ensure that the Commission has the necessary information to meet its statutory obligations going forward, we require international facilities-based carriers to submit, and maintain, a list of routes on which they have direct termination arrangements with a foreign carrier for that route.<sup>4</sup> Carriers with existing direct termination arrangements will submit their list within thirty (30) days after the effective date of the final rules in this Report and Order. Thereafter, carriers must update their lists within thirty (30) days after they add termination arrangements with a new destination foreign country or discontinue arrangements with a previously listed country. A new carrier or one without existing direct termination arrangements must file its list within 30 days of entering into a direct termination arrangements with a foreign carrier.

3. Additionally, we further streamline the Circuit Capacity Reports by eliminating the reporting of terrestrial and satellite circuits, but will continue to require reporting of submarine cable capacity data because it is important for national security and other purposes. The reforms adopted in the Report and Order significantly minimize the costs and burdens associated with the data collections by retaining annual reporting requirements for only those collections necessary to serve the public interest and for the Commission to fulfill its statutory obligations and protect U.S. interests.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

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

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> *Section 43.62 Reporting Requirements for U.S. Providers of International Services 2016 Biennial Review of Telecommunications Regulations*, Notice of Proposed Rulemaking, 32 FCC Rcd at 2616-25 (2017) (*Section 43.62 NPRM*).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> Routes on which the U.S. carrier has no arrangement with a carrier in the destination market and instead provides service to that market through arrangements with third party carriers in intermediate countries would not be included on the list.

(continued....)

**C. Response to comments by the Chief Counsel for Advocacy of the Small Business Administration**

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>5</sup>

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

**D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

7. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein.<sup>6</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>8</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>9</sup>

8. The policies and rules adopted in the Report and Order 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**

9. The policies and rules adopted in the Report and Order apply to entities providing international common carrier services pursuant to Section 214 of the Communications Act; 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 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). Previously, 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

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<sup>5</sup> 5 U.S.C. § 604(a)(3).

<sup>6</sup> *Id.*

<sup>7</sup> 5 U.S.C. § 601(6).

<sup>8</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), 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.”

<sup>9</sup> 15 U.S.C. § 632.

(continued....)

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>10</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>11</sup>

10. The Report and Order eliminates the annual Traffic and Revenue Reports. In its place, the Commission will rely on targeted data requests when necessary to take action against possible anticompetitive and other concerns on particular U.S.-international routes. Additionally, to ensure that the Commission has the necessary information to meet its statutory obligations going forward, facilities-based providers of international telephone service are required to provide a list of routes on which they have direct termination arrangements and provide updates as they add termination arrangements with a new destination foreign country or discontinue such arrangements to a previously listed country. These policies and requirements apply to a mixture of both large and small entities. The Commission has not developed a small business size standard directed specifically toward these entities. However, as described below, these entities fit into larger categories for which the SBA has developed size standards that provide these facilities or services.

11. *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>12</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>13</sup> U.S. Census data for 2012 indicate that there were 3,117 firms in this category that operated for the entire year.<sup>14</sup> Of that number, 3,083 firms operated with fewer than 1,000 employees, and 34 firms

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<sup>10</sup> 47 CFR § 43.62(b)(2).

<sup>11</sup> 47 CFR § 43.62(c).

<sup>12</sup> U.S. Census Bureau, 2012 NAICS Definition, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012%20NAICS%20Search> (last visited September 1, 2017). See also U.S. Census Bureau, 2017 NAICS Definition, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017%20NAICS%20Search> (last visited September 1, 2017).

<sup>13</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, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017%20NAICS%20Search> (last visited September 1, 2017); U.S. Census Bureau, Frequently Asked Questions (FAQs), <https://www.census.gov/eos/www/naics/faqs/faqs.html> (last visited September 1, 2017). While economic census data for 2012 are available, economic census data for 2017 are not currently available.

<sup>14</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).

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operated with 1,000 employees or more.<sup>15</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 Wireline Competition Bureau's 2010 Trends in Telephone Service Report, 359 companies reported that they were engaged in the provision of interexchange services.<sup>16</sup> Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>17</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small.

12. 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>18</sup> ICS refers to International Message Telephone Service (IMTS)<sup>19</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>20</sup> In 2013, the total revenue reported for Facilities IMTS was \$3.9 billion.<sup>21</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>22</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 103 international service providers filed Schedule 2 reporting data for U.S.-Billed Facilities ICS and/or Traditional Transiting ICS<sup>23</sup> provided during the 2014 reporting year.<sup>24</sup> Also, 55 international service providers filed Schedule 1

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<sup>15</sup> *Id.*

<sup>16</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>17</sup> *Id.*

<sup>18</sup> Section 43.62 *Filing Manual* at 10, para. 42.

<sup>19</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>20</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 asserted 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>21</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>22</sup> *Id.* at 10.

<sup>23</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>24</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

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for the 2015 reporting year, and 109 international service providers filed Schedule 2 for the 2015 reporting year.

13. International Private Line Service refers to private line service between the United States and a foreign point.<sup>25</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>26</sup> According to the 2014 Traffic and Revenue Report, there were 494 million private lines circuits in 2014.<sup>27</sup> The total customer revenue reported for International Private Line Service in 2014 was \$374 million.<sup>28</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>29</sup>

14. International Miscellaneous Service refers to any international telecommunications service other than ICS and International Private Line Service.<sup>30</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>31</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>32</sup>

15. *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)

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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.

<sup>25</sup> *Id.* at Appx. B: Definitions

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

<sup>27</sup> 2014 Traffic and Revenue Report at 15.

<sup>28</sup> *Id.*; *See also id.* at Appx. B: Data Tables.

<sup>29</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>30</sup> 2014 Traffic and Revenue Report at 16.

<sup>31</sup> *Id.*; *see also id.* at Appx. B: Data Tables.

<sup>32</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.

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are included in this industry.”<sup>33</sup> The SBA has developed a small business size standard for the category of Telecommunications Resellers, which consists of all such companies having 1,500 or fewer employees.<sup>34</sup> U.S. Census data for 2012 indicates that there were 1,341 firms in this category that operated for the entire year.<sup>35</sup> Of that number, 1,341 operated with fewer than 1,000 employees and none operated with more than 1,000 employees.<sup>36</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. 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>37</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>38</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.

16. *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.

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<sup>33</sup> U.S. Census Bureau, *2012 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2012%20NAICS%20Search> (last visited September 1, 2017). See also U.S. Census Bureau, *2017 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017%20NAICS%20Search> (last visited September 1, 2017).

<sup>34</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>35</sup> 9 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>36</sup> *Id.*

<sup>37</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>38</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.

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17. *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>39</sup> The SBA has developed a small business size standard for the category of Wireless Telecommunications Carriers (except Satellite), which consists of all such companies having 1,500 or fewer employees.<sup>40</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>41</sup> Of that number, 955 firms operated with fewer than 1,000 employees, and 12 firms operated with 1,000 employees or more.<sup>42</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>43</sup> Of these 413 companies, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>44</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 that may be affected by the adopted rules, can be considered small.

18. *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>45</sup> The SBA has approved these definitions.<sup>46</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.

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<sup>39</sup> U.S. Census Bureau, *2012 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2012%20NAICS%20Search> (last visited September 1, 2017). See also U.S. Census Bureau, *2017 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search> (last visited September 1, 2017).

<sup>40</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*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search> (last visited September 1, 2017); U.S. Census Bureau, *Frequently Asked Questions (FAQs)*, <https://www.census.gov/eos/www/naics/faqs/faqs.html> (last visited September 1, 2017). While economic census data for 2012 are available, economic census data for 2017 are not currently available.

<sup>41</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>42</sup> *Id.*

<sup>43</sup> See *Trends in Telephone Service* at Table 5.3: Number of Telecommunications Service Providers by Size of Business.

<sup>44</sup> *Id.*

<sup>45</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>46</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).

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19. *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>47</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>48</sup> The entities that provide such services are a mix of large and small entities. We do not have information on the size of such VoIP providers.<sup>49</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>50</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>51</sup> U.S. Census data for 2012 indicates that there were 3,117 firms in this category that operated for the entire year.<sup>52</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>53</sup> As a result, for the purpose of this FRFA 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>54</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>55</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>56</sup> Of that number, 1,400 firms had annual receipts of under \$25 million and

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<sup>47</sup> 47 CFR § 43.62(b)(2).

<sup>48</sup> *2014 Traffic and Revenue Report* at 1.

<sup>49</sup> See *supra* note 24.

<sup>50</sup> 4 U.S. Census Bureau, 2012 NAICS Definition, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012%20NAICS%20Search> (last visited September 1, 2017); See also U.S. Census Bureau, 2017 NAICS Definition, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017%20NAICS%20Search> (last visited September 1, 2017).

<sup>51</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*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017%20NAICS%20Search> (last visited September 1, 2017); U.S. Census Bureau, *Frequently Asked Questions (FAQs)*, <https://www.census.gov/eos/www/naics/faqs/faqs.html> (last visited September 1, 2017). While economic census data for 2012 are available, economic census data for 2017 are not currently available.

<sup>52</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 September 1, 2017).

<sup>53</sup> *Id.*

<sup>54</sup> U.S. Census Bureau, 2012 NAICS Definition, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2012%20NAICS%20Search> (last visited September 1, 2017); See also U.S. Census Bureau, 2017 NAICS Definition, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2017%20NAICS%20Search> (last visited September 1, 2017).

<sup>55</sup> 13 CFR § 121.201, NAICS code 517919.

<sup>56</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).

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15 firms had annual receipts of \$25 million to \$49,999,999.<sup>57</sup> Consequently, we estimate that the majority of VoIP providers are small entities.

20. *Spot Market Operators.* A “spot market” is a market where service providers can buy or sell call completion services for immediate delivery.<sup>58</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>59</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>60</sup> The Commission has not developed a small business size standard specifically for operators of spot markets. As a result, for purposes of this FRFA, we consider all such entities to be small businesses.

## 2. Circuit Capacity Reports

21. The Report and Order retains and streamlines the Circuit Capacity Reports by removing the requirement to file terrestrial and satellite circuit data. The submarine cable filing requirements of the Circuit Capacity Reports are retained because the data is essential for the Commission to fulfill its statutory obligations and for national security purposes, as submarine cables are critical infrastructure. These policies and requirements apply to a mixture of both large and small entities.

22. *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>61</sup> According to the International Bureau’s internally developed data, 84 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>62</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>63</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

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

<sup>58</sup> *Section 43.62 Filing Manual* at 16, para. 74

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> 47 CFR § 43.62(a).

<sup>62</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>63</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*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017%20NAICS%20Search> (last visited September 1, 2017); U.S. Census Bureau, *Frequently Asked Questions (FAQs)*, <https://www.census.gov/eos/www/naics/faqs/faqs.html> (last visited September 1, 2017). While economic census data are available for 2012, economic census data for 2017 are not currently available.

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could report a small amount of capacity and have significant revenues, we will consider those 85 carriers to be small entities at this time.

23. *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>64</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>65</sup> The category of All Other Telecommunications has a size standard of \$32.5 million or less in annual receipts.<sup>66</sup>

24. 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 reselling satellite telecommunications.”<sup>67</sup> For this industry, U.S. Census data for 2012 indicate that 333 firms operated for the entire year.<sup>68</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>69</sup> Consequently, the Commission estimates that the majority of Satellite Telecommunications firms that may be affected by our action, are small entities.

25. 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>70</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>71</sup> Of that number,

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<sup>64</sup> *Section 43.62 Filing Manual* at 26, para. 135

<sup>65</sup> 13 CFR § 121.201, NAICS code 517410.

<sup>66</sup> 13 CFR § 121.201, NAICS code 517919.

<sup>67</sup> U.S. Census Bureau, *2012 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517410&search=2012%20NAICS%20Search> (last visited September 6, 2017); *See also* U.S. Census Bureau, *2017 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517410&search=2017%20NAICS%20Search> (last visited September 6, 2017)

<sup>68</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\\_51SSSZ4&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table) (U.S. Receipts Size of Firms Census Table).

<sup>69</sup> *Id.*

<sup>70</sup> U.S. Census Bureau, *2012 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2012%20NAICS%20Search> (last visited September 6, 2017); *See also* U.S. Census Bureau, *2017 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2017%20NAICS%20Search> (last visited September 6, 2017).

<sup>71</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).

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1,400 firms had annual receipts of under \$25 million and 15 firms had annual receipts of \$25 million to \$49,999,999.<sup>72</sup> Consequently, the Commission estimates that the majority of All Other Telecommunications firms that may be affected by the adopted rules, are small entities.

26. *Operators of Common Carrier/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>73</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>74</sup> U.S. Census data for 2012 indicate that there were 3,117 firms in this category that operated for the entire year.<sup>75</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>76</sup> Thus under this category and the associated small business size standard, the majority of these carriers can be considered small 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>77</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>78</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 FRFA.

27. *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>79</sup> U.S. Census data for 2012 indicates that there were 3,117 firms in this category that operated for the entire year.<sup>80</sup> Of that number, 3,083 firms operated with fewer than 1,000 employees,

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<sup>72</sup> *Id.*

<sup>73</sup> 47 CFR § 43.62(a).

<sup>74</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>75</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>76</sup> *Id.*

<sup>77</sup> 47 CFR § 43.6(a).

<sup>78</sup> *See supra* note 66.

<sup>79</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>80</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).

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and 34 firms operated with 1,000 employees or more.<sup>81</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>82</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>83</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>84</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>85</sup> Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the adopted rules. 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, 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.

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

28. The adopted rule changes affect the 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. We eliminate and further streamline the current international reporting requirements to reduce the burdens for both small and large carriers. Specifically, we eliminate the requirement to file annual Traffic and Revenue Reports and will rely on targeted data requests when necessary to protect against anticompetitive behavior on U.S.-international routes. Facilities-based providers of international telephone service will be required to provide a list of routes on which they have direct termination arrangements, which should be minimally burdensome to carriers as the information is readily available in the normal course of business. Carriers would need to update information as they add termination arrangements with a new destination foreign country or discontinue such arrangements to a previously listed country. The list of routes and the targeted data requests are significantly less costly and burdensome than filing an annual report. Additionally, for the Circuit Capacity Reports, we eliminate the reporting of terrestrial and satellite circuits. As a result, the adopted rules will reduce the data that is annually required to be filed with the Commission and will be financially beneficial and not impose any significant economic burdens on small carriers.

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<sup>81</sup> *Id.*

<sup>82</sup> See *Trends in Telephone Service* at Table 5.3: Number of Telecommunications Service Providers by Size of Business.

<sup>83</sup> See *id.*

<sup>84</sup> 15 U.S.C. § 632.

<sup>85</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).

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

29. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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>86</sup>

30. In order to reduce the costs and burdens on carriers, including small entities, we reform the Commission’s international reporting requirements. As proposed in the *NPRM* we eliminate the requirement to file annual Traffic and Revenue Reports. Instead of the annual reports, we establish a process by which we will collect Traffic and Revenue data on a targeted basis. All commenters in the proceeding support the elimination of the Traffic and Revenue Reports.<sup>87</sup> Commenters also support requesting information on a targeted as needed basis.<sup>88</sup> Facilities-based providers of international telephone service will be required to provide a list of routes on which they have direct termination arrangements. The list of routes will provide the Commission with information to identify carriers from which it may need to seek information on any issue that arises in a region or on a particular route. Carriers must update their information within thirty (30) days as they add termination arrangements with a new destination foreign country or discontinue arrangements with a previously listed country. Maintaining this minimal list is significantly less burdensome than filing an annual traffic report as this information should be readily available to carriers in the normal course of business. ICIO supports a requirement obligating carriers to identify the services they provide and the routes they service.<sup>89</sup> Similarly, AT&T notes that they would not object to providing the Commission, on a confidential basis, a list of routes on which it has termination arrangements with a carrier in the destination foreign country.<sup>90</sup> While AT&T argues that it wants the list to be confidential, we find maintaining a list that is not confidential will not be a significant burden to carriers and we find that the list would provide the Commission, carriers, and the public basic and essential information to understand any competitive issues that might arise on a particular route.

31. In the *NPRM*, the Commission contends that it was best to retain the Circuit Capacity Reports, but requested comments on how to further streamline the reports. Commenters that addressed the Circuit Capacity Reports proposed to eliminate the reports arguing that the burdens outweigh the benefits.<sup>91</sup> We find that the submarine cable data in the Circuit Capacity Reports is essential for national

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<sup>86</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

<sup>87</sup> AT&T Comments at 1 (“AT&T therefore strongly supports this proposal to remove the annual international Traffic and Revenue report.”); CTIA Comments at 1 (“CTIA comments the Commission for proposing to eliminate the international traffic and revenue reports, as CTIA and other suggested in response to the 2016 Biennial Review Public Notice.”); ICIO Comments at 1; Inmarsat Comments at 1; Iridium Comments at 1; SD Comments at 1; Sprint Comments at 1; T-Mobile Comments at 3; TNZI USA Comments at 2; USTelecom Comments at 2; Verizon Comments at 1; VON Coalition at 1.

<sup>88</sup> CTIA Comments at 4; Verizon Comments at 4; BT Reply Comments at 1-2; USTelecom Reply Comment at 3.

<sup>89</sup> ICIO Comments at 20.

<sup>90</sup> AT&T Comments at 11.

<sup>91</sup> AT&T Comment at 2 (the international Circuit Capacity Report is also burdensome and appears to provide little useful information to serve the purposes identified in the Notice that cannot be provided more effectively in more targeted and less costly ways.”); ICIO Comments at 11; Inmarsat Comments at 4; Sprint Comments at 1; T-Mobile

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security. The Executive Branch agencies have also identified the submarine cable data as important for national security purposes, as submarine cables are critical infrastructure and there are no alternative sources for the information. The data is also used by the Commission in tracking the submarine cable markets and for merger analysis. Therefore, we retain the Circuit Capacity Reports for the submarine cable data. Commenters argue that terrestrial information is not needed because there is a low barrier to entry, and that satellite services should be excluded because they do not provide dedicated transport capacity from the required reporting.<sup>92</sup> Commenters also argue that the report should not be kept just to collect regulatory fees.<sup>93</sup> We agree with commenters that the information on terrestrial and satellite services can be excluded without significantly affecting our analysis of facilities-based competition. We also agree it is not necessary for us to retain our annual collection of data of the terrestrial and satellite services within the Circuit Capacity Reports. Instead, if it is deemed necessary to collect that data for regulatory fee purposes, the Commission can collect that data within the regulatory fee process.<sup>94</sup> Thus, while we retain the Circuit Capacity Reports, we will further streamline the reports to minimize the burdens associated with the data collection by removing the requirement to file terrestrial and satellite circuit data. This will significantly reduce the cost, time, and burden associated with the Circuit Capacity data collection. Overall, with the adoption of these changes to the international reporting requirements we minimize the economic impact on carriers, including small entities, by eliminating unnecessary data collections and retaining annual reporting requirements for only those collections necessary to serve the public interest.

32. **Report to Congress:** The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>95</sup> In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>96</sup>

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Comments at 3, n.8; USTelecom Comments at 11; Verizon Comments at 5; VON Comments at 4; BT Reply Comments at 1; TC Reply Comments at 1; SES Reply Comments at 1.

<sup>92</sup> ICIO Comments at 13; Inmarsat Comments at 4.

<sup>93</sup> USTelecom Comments at 14.

<sup>94</sup> Federal Communications Commission, *Regulatory Fees*, <https://www.fcc.gov/licensing-databases/fees/regulatory-fees> (last visited Sept. 1, 2017).

<sup>95</sup> See 5 U.S.C. §801(a)(1)(A).

<sup>96</sup> See 5 U.S.C. §604(b).