

FCC Releases Order Modifying International Reporting Requirements and Soliciting Comments on Proposed Revisions to Other International Reporting Requirements

May 20, 2011

On May 13, 2011, the Federal Communications Commission ("FCC" or "Commission") released a First Report and *Order* and Further Notice of Proposed Rulemaking (the "*Order*") eliminating or revising certain international reporting requirements and seeking comment on other proposed revisions. In the *Order*, the Commission eliminated the quarterly traffic and revenue report filing requirement for large carriers¹ and foreign-affiliated switched resale carriers. The Commission defined foreign-affiliated switched resale carriers as U.S.-authorized providers of international message telephone service ("IMTS") resale that are affiliated with a foreign carrier and that (i) "have sufficient market power at the foreign end of an international route to affect competition adversely in the U.S. market" or (ii) collect settlement payments from U.S. carriers for traffic affiliated in the resale carrier's home market.² The Commission eliminated the requirement that these foreign-affiliated switched resellers file quarterly reports on the grounds that the reports were no longer necessary to identify concerns about settlement rates or abuse of foreign market power.

The Commission also eliminated the circuit addition and telegraph toll division reports as well as the requirement that carriers submit traffic/revenue or circuit status reports identifying data between U.S. domestic points and certain off-shore U.S. points or between off-shore U.S. points.

The Commission chose to retain the annual traffic/revenue and circuit status report requirements, citing the importance of the information in performing Commission activities - e.g., reviewing transactions, protecting U.S. consumers from anticompetitive conduct, and promoting competition on U.S. international routes - as well as an inability to obtain the information from other sources.

In the NPRM portion of the *Order*, the Commission solicited comments on proposed changes that the Commission believes may streamline the international reporting requirements. The Commission also sought comment on its proposal to require the reporting of circuits operated on a non-common carrier basis. In considering a new requirement for non-common carrier circuits, the Commission explained that its current reporting requirement distinguished between common carrier and non-common carrier circuits even though both types of circuits are fungible. The Commission also noted that the lack of information on non-common carrier circuits skewed its statistics regarding the telecommunications industry. The Commission also sought comment on whether its obligations under the Cable Landing License Act required it to collect information about the use of international

non-common carrier circuits or if the Commission has authority to collect the information under the Communications Act pursuant to the Commission's ancillary Title I jurisdiction over the providers.

The Commission also sought comment on its proposal to extend the international reporting requirements to voice over Internet protocol ("VoIP") providers. The Commission noted that international voice traffic generated by interconnected VoIP providers appears to "constitute a significant and growing component of the U.S. international voice traffic market" and expressed concern that the Commission may not be able to understand the IMTS market unless it has data regarding VoIP traffic. The Commission sought comment on whether it has ancillary Title I authority under sections 201 and 202 or other sections of the Act to require VoIP providers to comply with certain of the reporting requirements in section 43 of the Commission's rules.

Other key proposed changes include streamlining the traffic/revenue and circuit status reports by consolidating the reports through uniform reporting requirements under a new rule, a consolidated filing manual, and a May 1 filing date for the annual version of each report. The new rule would require the submission of three separate reports: (i) a Services Report providing information about the carrier; (ii) a Traffic and Revenue Report and (iii) a Circuit Status Report. All filing entities would be required to submit the Services Report on an annual basis while the other two reports would be filed only by certain entities. The Commission also proposed to require revisions to each report whenever a filer becomes aware of an error that is "equal to or greater than one percentage point" of the information filed. This requirement would apply to all previously-filed reports, not just the most recent report.

Further, the Commission is considering establishing a \$5 million threshold for filing IMTS resale traffic/revenue reports for carriers that provide only IMTS resale service. The Commission also expressed concern about filers seeking confidential treatment of all information in their traffic/revenue and circuit status reports. The Commission sought comment on what information should be classified as "not routinely available to the public" under Commission rules such that the remaining report information would be made available to the public.

Other proposed changes include, but are not limited to, requiring the reporting of fixed and mobile termination data and world total IMTS traffic/revenue by customer category, and eliminating the requirement to report the number of IMTS messages, to report regional totals, or to use billing codes on the traffic/revenue report. For the circuit status report, additional proposed changes include eliminating the requirements to report active circuits by service category and to report derived circuits. However, the FCC indicated that it would retain the requirement to report circuit data based on 64 kbps equivalents.

An effective date has not yet been established for the Commission's rulings modifying certain reporting requirements. The Commission directed the International Bureau to issue a public notice announcing when the changes will take effect and notifying carriers of changes in what must be filed for the remaining reports. Comments and reply comments on the issues raised in the NPRM will be due 30 days and 45 days, respectively, after the *Order* is published in the Federal Register.

For further information on the revised reporting requirements or the NPRM, please contact your usual Kelley Drye [Communications](#) attorney.

¹ "Large Carriers" are defined as those whose aggregate minutes of facilities-based or facilities resale switched telephone traffic for service billed inside or outside the United States exceed certain criteria identified in Section 43.61(b) of the Commission's rules. 47 C.F.R. § 43.61(b). Specifically, a

carrier will be considered "Large" if (i) its aggregate minutes described above and billed inside or outside of the U.S. exceed one (1) percent of the total of such minutes of international traffic for all U.S. carriers; or (ii) if the aggregate minutes described above and billed inside or outside the U.S. for any foreign country exceed 2.5 percent of the total of such minutes of international traffic for that country for all U.S. carriers. 47 C.F.R. § 43.61(b)(i) - (iv).

² See 47 C.F.R. § 43.71(c).