

Federal Communications Commission Draft Order Proposes Possible Elimination and Further Streamlining of Section 43.62 Annual International Reports

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In advance of its October 24, 2017 Open Meeting, the Federal Communications Commission (Commission) has released a [Draft Report and Order](#) (Draft Order) for Commission consideration that, if adopted, would eliminate the Section 43.62 annual International Traffic and Revenue Report (International Traffic Report) and streamline the Section 43.62 annual Circuit Capacity Report (Circuit Capacity Report). As we reported in [March](#), the Commission previously released a notice of proposed rulemaking seeking comments on whether it should retain, modify or eliminate the annual International Traffic Report and Circuit Capacity Report filed by certain providers of international telecommunications. The Draft Order is not final and may differ from the final item released after the Open Meeting. However, if the Draft Order is adopted as currently drafted, it could offer some welcome relief for reporting international providers.

Most significantly, the Commission appears poised to eliminate the International Traffic Report in favor of facilities-based international service providers submitting an initial limited informational filing and, as necessary, responding to targeted data requests. The Draft Order explains that the elimination of the International Traffic Report is justified for a number of reasons, including that the costs of preparing, submitting and reviewing the data outweigh the benefits of the report's data; changes in the international telecommunications market have rendered the International Traffic Report data less relevant; and the International Traffic Report data does not provide a comprehensive picture of the international telecommunications market. Noting that a few U.S.-international routes remain uncompetitive and the Commission would need data, previously provided by the International Traffic Report, to evaluate allegations of anticompetitive conduct on those routes, the Draft Order states the Commission would rely on other sources of data including commercially available data and targeted data requests to carriers. As a result, while the Draft Order suggests the Commission is ready to remove a significant reporting burden, service providers may be subject to some data submission requirements, although possibly much less frequently.

The Draft Order also identifies potential modifications to the annual Circuit Capacity Report. While not as dramatic as a total reporting elimination, the Commission appears willing to further streamline the Circuit Capacity Report requirements. In particular, carriers would no longer have to file circuit data for terrestrial and satellite facilities and the Draft Order contemplates eliminating the requirement that only one licensee file capacity information for consortium cables. Although some commenters argued for complete elimination of the Circuit Capacity Report, the Draft Order asserts

the Commission and other government agencies, such as the Department of Homeland Security, view the Circuit Capacity Report data as critical to national security and public safety emergency concerns. Citing a lack of reliable alternative sources for the data, the Commission appears intent to retain the Circuit Capacity Report requirement. However, while the Circuit Capacity Report likely will remain in effect, the next filing – which typically would be due next March – may be delayed. The Draft Order proposes to direct the International Bureau to seek comment on changes to the Section 43.62 Filing Manual to reflect the proposed reporting modifications and delegates authority to the International Bureau to delay the next annual Circuit Capacity Report filing until after a revised Filing Manual is issued. As a result, reporting carriers likely will get a limited reprieve on the next Circuit Capacity Report filing and could have the opportunity to shape the revised Section 43.62 Filing Manual through participation in any comment process.

Kelley Drye will issue a more detailed analysis when a final Order is adopted, so check back for more information.