

Federal Communications Commission Seeks Comment on Proposed Elimination and Further Streamlining of Section 43.62 International Reports

April 20, 2017

On March 23, 2017, the Federal Communications Commission (FCC or Commission) released a Notice of Proposed Rulemaking (NPRM), in IB Docket Nos. 16-131 and 17-55, seeking comment on proposals to eliminate and further streamline certain of the Commission's international service reporting obligations. As noted in Kelley Drye's [March 27, 2017 blog post](#), the NPRM seeks comment on the Commission's proposal to eliminate the annual International Traffic and Revenue Report and further streamline the annual Circuit Capacity reporting requirement. Both Reports are submitted pursuant to Section 43.62 of the Commission's rules (the Section 43.62 Reports). Consequently, Section 43.62 Report filers and other interested parties have the opportunity to impact the Section 43.62 reporting rules by expressing their ideas and concerns during the comment and reply comment cycle. Comments are due by May 17, 2017 and replies are due by June 1, 2017.

In initiating the rulemaking, the FCC's NPRM explains that, historically, the International Traffic and Revenue Report had been used to monitor settlement rates and develop and enforce the Commission's benchmark policy. However, based on changes in the international telecommunications industry, the Commission has concluded that most routes are competitive and the Commission now suggests that the cost of the International Traffic and Revenue Report data collection exceeds the benefits of the information collected. The Commission cites the apparent "significant burden on the filing entities and the Commission" as support for the proposal to eliminate the International Traffic and Revenue reporting obligation. Moreover, the Commission notes that the report data may actually underestimate the level of competition in the international market as the report does not include data from non-interconnected VoIP providers which often provide service for free and therefore, overall consumer rates for international service may be lower than indicated by the International Traffic and Revenue Report. Although the Commission is considering eliminating the International Traffic and Revenue Report, the FCC also questions the effect of such an elimination and asks whether there are "less burdensome" options for obtaining the information currently collected by the report. The NPRM also notes that, to the extent the Commission needs data previously collected in the International Traffic and Revenue Report, the FCC would conduct "more targeted collections, in response to actual U.S. carrier complaints."

The NPRM does not propose as significant of a change to the Circuit Capacity reporting requirement, suggesting the report may be streamlined rather than eliminated, citing an important continued role for the data. In particular, the Commission describes the Circuit Capacity Report as, among other

purposes, identifying levels of facilities-based competition on U.S.-international routes, providing national security agencies with data necessary to ensure the safety of U.S.-international telecommunications infrastructure, and providing information regarding the availability of alternative facilities serving specific locations. Consequently, the Commission believes the benefits of the report appear to outweigh the costs of the annual data collection. However, as with the International Traffic and Revenue Report, the Commission seeks comment on how the Circuit Capacity Report's data collection impacts filers and whether there are alternatives that should be considered.

The timing of the NPRM, proposing to further streamline the Section 43.62 reporting requirements, a mere four years after the Commission's comprehensive review and revision of the Section 43.62 Reports in 2013, may signal a turn toward eased reporting obligations under the new Commission administration. In initiating the new streamlining rulemaking proceeding, the NPRM references the suggestions of industry participants in the Commission's 2016 Biennial Review proceeding reviewing FCC telecommunications regulations. The NPRM notes comments such as those of CTIA asserting that the Section 43.62 Reports "serve no apparent purpose, but impose costs on CMRS carriers by requiring them to maintain extensive network systems to track and record international revenue and traffic data", and AT&T's questioning of "whether any remaining public interest benefits may be obtained more efficiently and effectively in other more targeted ways . . . rather than by imposing a significant annual reporting burden on all facilities-based international carriers and interconnected VoIP providers." The Commission's views, as expressed in the NPRM, on the annual International Traffic and Revenue Report appear to echo some of the concerns raised by industry participants.

We provide below a general overview of key issues for which the FCC is seeking comment. Interested parties should assess the extent to which they could be impacted by the FCC's proposals and consider participating in the comment cycle.

The NPRM seeks comment on, including but not limited to, the following questions and issues:

International Traffic and Revenue Report

- The time and financial costs (including average wage rate of report preparers) of preparing and submitting the International Traffic and Revenue Report.
- The level of complexity associated with completing the International Traffic and Revenue Report, *i.e.*, Is necessary data available from the filer's internal systems? Are complex analyses of the filer's data required in order to complete the report? Does the filer's analysis have any impact on the reliability of the information submitted?
- What portion of international telecommunications service is provided by non-interconnected voice over Internet protocol (VoIP) service and what is the projected growth for that service?
- Is there data and information relevant to addressing anticompetitive conduct on U.S.-international routes that would be unavailable if the International Traffic and Revenue Report was eliminated?
- Should the FCC continue to collect the International Traffic and Revenue Report data for international routes that are not yet fully competitive and on which the settlement rate still exceeds the benchmark rate?

Circuit Capacity Report

- The time and financial costs (including average wage rate of report preparers) of preparing and submitting the Circuit Capacity Report.
- Options for streamlining or improving the Circuit Capacity Report, *i.e.*, Have there been any changes in the international transport market that warrant a review of the information collected in this report? Should the FCC collect different information to minimize filer reporting burdens? Is circuit capacity data available from commercial sources and are there limits on the FCC's use of such data?
- Noting discrepancies between cable operator capacity reporting and cable capacity holder reporting on the same cables, the Commission seeks comment on the cause of such inconsistencies and how they can be addressed.
- The Commission also notes inconsistencies, in capacity held or relinquished via infeasible rights of use (IRUs) or inter-carrier leaseholds (ICLs) only on routes where another filer will be reporting, reported on cable capacity holder reports and seeks comment on whether the filing instructions need to be clarified or if reporting should be changed.
- Whether and how (by cable, consolidated regionally, *etc.*) submarine cable capacity data should be made available to the public in order to address cable operator confidentiality concerns.
- The FCC proposes changing the confidentiality rule for Circuit Capacity Reports to clarify that such confidentiality requests must be consistent with Section 0.459 of the Commission's rules.

For further information, please contact your Kelley Drye attorney or any other member of the firm's [Communications Practice Group](#).