



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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NOTICE OF INTENT TO SHARE INTERNATIONAL CIRCUIT CAPACITY DATA FROM 2015 TO 2017 WITH FEDERAL AGENCIES

IB Docket No. 19-32

Comment Date: March 1, 2019

The Commission collects annual circuit capacity data for U.S.-international submarine cable systems pursuant to section 43.82 of the Commission's rules.¹ In 2017, the Commission found that circuit capacity data continue to be "necessary for the Commission to fulfill its statutory obligations and will continue to play a vital public interest role for other federal agencies."² In particular, the Commission found that "these data are essential for our national security and public safety responsibilities in regulating communications submarine cables" and that "circuit capacity data are important for the Commission's contributions to the national security and defense of the United States."³ In retaining this reporting requirement, the Commission specifically noted the submission by the Department of Homeland Security (DHS) that this information is critical to its national security and homeland security functions and, when combined with other data sources, is used to protect and preserve national security and for its emergency response purposes.⁴

The International Bureau provides notice that we intend to share the international circuit capacity data for the 2015 to 2017 reporting periods, including data for which confidential treatment has been requested,⁵ with DHS and other national security agencies pursuant to the generally applicable procedures set out below. This notice initiates a pleading cycle that would allow any entity that provided circuit capacity data from 2015 to 2017 to oppose such disclosure of its data to DHS and other national security agencies.

The Commission receives two types of annual circuit capacity data regarding international submarine cables: (1) submarine cable licensees must file capacity information for each cable system (i.e., available capacity) as of December 31st of the current reporting period and two years from the current reporting period (i.e., planned capacity) and (2) submarine cable landing licensees and common

¹ 47 CFR § 43.82.

² *Section 43.62 Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations*, IB Docket Nos. 17-55 and 16-131, Report and Order, 32 FCC Rcd 8115, 8127, para. 24 (2017) (*Section 43.62 Report and Order*).

³ *Id.* at 8128-29, para. 28.

⁴ *Id.* at 8129, para. 28 (citing Letter from Emily Early, Director (Acting), Strategy, Policy, and Plans, Office of Cyber and Infrastructure Analysis, National Protection and Program Directorate, DHS, to Marlene Dortch, Secretary, FCC (Sept. 21, 2017)).

⁵ *See* 47 CFR § 0.442(a).

(continued....)

carriers that owned or leased capacity on a submarine cable between the United States and any foreign point must file capacity information as of December 31st of the current reporting period.⁶ The Commission allows reporting entities to request confidential treatment of their data under section 0.459(a)(4) of the Commission's rules by checking a box in the Registration Form.⁷ The annual aggregated data from the reports are released to the public.⁸

Although the Commission's regulations provide that proprietary and commercially sensitive information will be withheld from public disclosure, subject to the public's right to seek disclosure under the Freedom of Information Act and implementing regulations,⁹ the Commission may disclose to other Federal agencies records that have been submitted to the Commission in confidence upon another agency's request or upon the Commission's own motion.¹⁰ In general, under federal law, 44 U.S.C. § 3510, the Commission may share information it has collected with other Federal government agencies. Section 3510 further provides that all provisions of law that relate to the unlawful disclosure of information apply to the employees of the agency to which the information is released "in the same manner and to the same extent" as they do to employees of the collecting agency.¹¹ In other words, if the Commission shares circuit capacity data with DHS or other national security agencies, those agencies are required to protect the confidentiality of information to the same extent as the Commission does.

Entities that provided the Commission circuit capacity data for the 2015, 2016 and/or 2017 reporting periods with a request for confidential treatment have 10 days from the date of this notice to oppose disclosure to DHS and other national security agencies.¹² If we receive no opposition, the International Bureau will disclose this circuit capacity information to DHS and other national security agencies. If disclosure is opposed and the Commission decides to make the data available, the procedures set forth in section 0.442(d)(4) will apply.¹³

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, entities that provided the Commission circuit capacity data for the 2015, 2016 and/or 2017 reporting periods with a request for confidential treatment may file objections to this planned disclosure of the 2015 to 2017 circuit capacity data by filing in IB Docket 19-32 on or before March 1, 2019. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

⁶ 47 CFR § 43.82(a).

⁷ 47 CFR § 43.82(b); *see Section 43.62 Report and Order*, 32 FCC Rcd at 8132, para. 35.

⁸ *See FCC, Section 43.82 Circuit Capacity Data for U.S.-International Submarine Cables*, <https://www.fcc.gov/circuit-capacity-data-us-international-submarine-cables>.

⁹ 5 U.S.C. § 552, 47 CFR §§ 0.457(d), 0.459(d).

¹⁰ 47 CFR § 0.442(d).

¹¹ 44 U.S.C. § 3510(b)(1).

¹² 47 CFR § 0.442(d)(1).

¹³ 47 CFR § 0.442(d)(4) ("If disclosure is opposed and the Commission decides to make the records available to the other agency, the party who furnished the records to the Commission will be afforded ten calendar days from the date of the ruling to move for a judicial stay of the Commission's action. If the party does not move for stay within this period, the records will be disclosed.").

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. All envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

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

Parties must also send a courtesy copy of their filing to Gabrielle Kim and David Krech, Telecommunications and Analysis Division, International Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554 or via e-mail to Gabrielle.Kim@fcc.gov and David.Krech@fcc.gov.

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.¹⁴ Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

For further information, please contact Gabrielle Kim, Attorney Advisor, Telecommunications and Analysis Division, International Bureau at Gabrielle.Kim@fcc.gov or at (202) 418-0730 or David Krech, Associate Division Chief, Telecommunications and Analysis Division, International Bureau at David.Krech@fcc.gov or at (202) 418-7443.

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¹⁴ 47 CFR §§ 1.1200 *et seq.*