

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )

2018 Biennial Regulatory Review )

Amendment of Parts 1, 25, 43 and 63 )  
of the Commission's Rules )

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IB Docket No. 18-377

**COMMENTS OF KELLEY DRYE & WARREN LLP**

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## Table of Contents

	<u>Page</u>
SUMMARY .....	i
I. INTRODUCTION .....	2
II. THE COMMISSION IMPLICITLY CONCLUDED THAT CERTAIN SECTION 63.10(C) REPORTING IS UNNECESSARY, BURDENSOME, AND CAN BE OBTAINED MORE EFFICIENTLY AND COMPREHENSIVELY BY OTHER MEANS .....	4
A. The Section 63.10(C) Reports Are Burdensome For Carriers To Complete.....	5
B. The Section 63.10(C) Reports Require Carriers To Report Unnecessary Data.....	7
1. <i>Traffic and Revenue Reporting</i> .....	7
2. <i>Circuit Capacity Reporting</i> .....	9
C. The 2017 International Reporting Streamlining Order Did Not Distinguish Between Data Provided by Dominant and Non-Dominant Carriers .....	12
III. ELIMINATING THE SECTION 63.10(C) REPORTS WILL NOT HINDER THE COMMISSION’S ABILITY TO ADDRESS ANTICOMPETITIVE ACTIVITIES ON AN INTERNATIONAL ROUTE. ....	14
IV. CONCLUSION.....	18

## SUMMARY

Kelley Drye, as counsel to numerous international telecommunications providers subject to the Commission's regulatory and reporting requirements, applauds the Commission's recent streamlining of annual international reporting requirements and urges the Commission and International Bureau to take further action by eliminating the Section 63.10(c)(2)–(4), 47 C.F.R. §§63.10(c)(2)–(4), quarterly reporting requirements that apply solely to carriers classified as dominant on an international route. Such action is not novel as, over the past few years, the Commission has taken action to eliminate or streamline burdensome or outdated regulatory compliance requirements.

In 2017, the Commission eliminated the annual Section 43.62 International Traffic and Revenue Report (“Traffic and Revenue Report”) and streamlined the annual Section 43.82 Circuit Capacity Report. The Section 63.10(c) reports are quarterly analogues of the annual Traffic and Revenue Report and Circuit Capacity Report and eliminating the Section 63.10(c) reports avoids the illogical result of requiring dominant carriers to submit, *on a quarterly basis*, much of the same incomplete data, requiring the same burdensome processes, that the Commission determined need not be submitted by either dominant carriers or non-dominant carriers, *on an annual basis*. The Commission's reporting changes applied to all international carriers and the Commission neither carved out, nor expressed a need to continue collecting the annual data from, dominant carriers. By applying the reporting changes to all international carriers, the Commission implicitly found that the Traffic and Revenue and Circuit Capacity data was not needed from dominant carriers. The same reasoning that supports the Commission's actions regarding the annual reports also supports elimination of the Section 63.10(c) reports.

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Kelley Drye & Warren LLP (“Kelley Drye” or the “Firm”) submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) Public Notice seeking comment in the 2018 biennial review of telecommunications regulations.<sup>1</sup> The Biennial Review Public Notice encourages commenters to identify, and propose modifications to, or repeal of, rules that are “outdated, archaic, or otherwise not in the public interest.”<sup>2</sup> Kelley Drye represents numerous international telecommunications providers, including many that are subject to the Commission’s reporting and other regulatory compliance obligations, and these comments reflect the Firm’s understanding of the reporting requirements

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<sup>1</sup> FCC Bureaus and Offices Seek Public Comment in 2018 Biennial Review of Telecommunications Regulations, DA 18-1260 (rel. Dec. 17, 2018) (the “Biennial Review Public Notice”).

<sup>2</sup> *Biennial Review Public Notice* at 1.

established in Section 63.10(c) of the Commission's rules<sup>3</sup> and the impact of these rules on international carriers.

## **I. INTRODUCTION**

Over the past few years the Commission has streamlined or eliminated many regulatory requirements, including some applicable to international carriers, that the Commission concluded were no longer necessary in light of industry changes or imposed too significant of a burden on reporting entities.<sup>4</sup> In particular, in 2017, the Commission eliminated the annual Section 43.62 International Traffic and Revenue Report ("Traffic and Revenue Report") and streamlined the annual Section 43.82 Circuit Capacity Report.<sup>5</sup> Kelley Drye, as counsel to numerous international telecommunications providers subject to the Commission's regulatory and reporting requirements, applauds the Commission's actions regarding the international reporting requirements and urges the Commission and International Bureau to take further action

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<sup>3</sup> 47 C.F.R. §63.10(c)(2)-(4).

<sup>4</sup> *In re: Section 43.62 Reporting Requirement for U.S. Providers of International Services; 2006 Biennial Review of Telecommunications Regulations*, 32 FCC Rcd 8115 (2017) ("2017 International Reporting Streamlining Order"). See also *In re: Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission's Rules*, 28 FCC Rcd 575 (2013) (e.g., eliminating annual traffic and revenue reporting for resellers with less than \$5 million in revenues); *In re: Elimination of Broadcast Main Studio Rule*, 32 FCC Rcd 8158, ¶¶3, 6 (2017) ("Broadcast Main Studio Order"); See *In re: FCC Form 325 Collection; Modernization of Media Regulation Initiative*, FCC 18-136, ¶1 (Sept. 26, 2018) ("FCC Form 325 Order").

<sup>5</sup> *2017 International Reporting Streamlining Order*.

by eliminating the Section 63.10(c)(2)–(4) quarterly reporting requirements that apply solely to carriers classified as dominant on an international route.<sup>6</sup>

In its *2017 International Reporting Streamlining Order*, the Commission identified less burdensome and more efficient options for collecting data that was more comprehensive than the data that was provided in the annual Traffic and Revenue Report. The Commission also concluded that certain data collected in the Circuit Capacity Report, used solely to calculate regulatory fees, was entirely unnecessary in light of other options for addressing regulatory fees. Because the Section 63.10(c) reports mirror the Traffic and Revenue Report and Circuit Capacity Report,<sup>7</sup> the logical inference to be drawn from the Commission’s *2017 International Reporting Streamlining Order* is that the Section 63.10(c) reports similarly collect information that is unnecessary or that can be obtained more efficiently and with a more comprehensive scope. The Section 63.10(c) reporting process is similarly burdensome for dominant carriers and is exacerbated by the fact that subject carriers must complete the process *four times per year*.

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<sup>6</sup> 47 C.F.R. §63.10(c)(2)–(4). Section 63.10(c) of the Commission’s rules requires carriers classified as dominant to submit, for the routes on which the carrier is classified as dominant, three reports providing data regarding: (i) minutes completed and settlements billed and paid on foreign routes; (ii) provisioning and maintenance of basic network facilities and services obtained from the carrier’s foreign affiliate; and (iii) for facilities-based carriers, active and idle circuits by facility (submarine, terrestrial and satellite).

<sup>7</sup> *In re: Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, 12 FCC Rcd 23891, ¶¶215-239, 270-286 (1997) (“Foreign Participation Order”). The Section 63.10(c)(3) provisioning and maintenance report has no annual analogue but, as discussed *infra*, this report’s data likely is less relevant in light of changes in the international telecommunications market.

Consequently, eliminating the Section 63.10(c) reports avoids the illogical result of requiring dominant carriers to submit, *on a quarterly basis*, the same incomplete data, requiring the same burdensome processes, that the Commission determined need not be submitted, by either dominant or non-dominant carriers, *on an annual basis*. The same reasoning that supported the Commission's actions regarding the annual reports also supports elimination of the Section 63.10(c) reports.

**II. THE COMMISSION IMPLICITLY CONCLUDED THAT CERTAIN SECTION 63.10(C) REPORTING IS UNNECESSARY, BURDENSOME, AND CAN BE OBTAINED MORE EFFICIENTLY AND COMPREHENSIVELY BY OTHER MEANS**

Over the past few years, the Commission has undertaken a detailed review of its international Traffic and Revenue Report and Circuit Capacity Report and concluded that the reporting was broken. The Commission determined that the reporting process imposed significant burdens on international carriers and required submission of data that was unnecessary, incomplete, and could be obtained more efficiently from other sources.<sup>8</sup> And yet, despite the fact that the Section 63.10(c) reports mirror the Traffic and Revenue Report and Circuit Capacity Report, *four times each year*, carriers classified as dominant – even on a single route – are required to undertake the burdensome process of submitting the very data that the Commission determined should *not be* provided by dominant carriers, or any other carriers, on an annual basis. The Commission must avoid regulatory inconsistency and prevent waste of carrier and Commission resources by eliminating the Section 63.10(c) reports that, similar to the

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<sup>8</sup> 2017 International Reporting Streamlining Order, ¶¶1,13,26.

annual reports, are burdensome and require submission of data that is either unnecessary or for which more comprehensive data is available from other sources.<sup>9</sup>

**A. The Section 63.10(C) Reports Are Burdensome For Carriers To Complete**

The record in the 2017 international reporting streamlining proceeding and the precursor, 2016 biennial regulatory review proceeding, is replete with carrier attestations regarding the time-consuming and difficult processes necessary to prepare the annual Traffic and Revenue Report and Circuit Capacity Report.<sup>10</sup> The reporting obligations can require that personnel be redirected from their normal tasks to compile data, potentially from numerous sources and personnel, and prepare the reports. The officer certifying the reports similarly must expend time to review and confirm the accuracy of the reports. The Commission itself has

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<sup>9</sup> See, e.g., *In re: Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area*, 33 FCC Rcd 7017, ¶6 (2018) (eliminating certain rules to “eliminate needless burdens” and avoid “asymmetry across competing commercial mobile radio services.”)

<sup>10</sup> See e.g., Comments of AT&T Services Inc., IB Docket Nos. 17-55, 16-131 at 2- (May 17, 2017) (“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.”); Comments of T-Mobile USA, Inc., IB Docket Nos. 17-55, 16-131, at 5-6 (May 17, 2017) (“For its part, ... T-Mobile has for years struggled to collect, calculate and prepare the data to be reported. T-Mobile must expend resources to maintain a separate accounting program that exists only to assist with the report preparation and serves no other function.”); Reply Comments of Tata Communications, IB Docket Nos. 17-55, 16-131, at 2 (“As the Commission correctly notes, filing annual International Traffic and Revenue Reports pursuant to current Commission rules places a significant burden on international licensees in significant excess of the benefit they provide to the Commission.”); Verizon Comments, IB Docket Nos. 17-55, 16-131 at 2-3 (May 17, 2017) (“Verizon Comments”) (“Verizon, for example, expends over 600 hours of employee time to prepare the international traffic and revenue reports each year – over three times the estimated burden.”). See also *2017 International Reporting Streamlining Order*, ¶¶ 10-12.



acknowledged, after thoroughly reviewing the Traffic and Revenue Report requirement, 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.”<sup>11</sup> The reporting difficulties noted above naturally extend to the quarterly Section 63.10(c) reports and Kelley Drye’s clients have noted similar difficulties with gathering and compiling data that generally are not maintained in the format required by the Section 63.10(c) reports. Additionally, with the advent of voice over the internet, it is now virtually impossible to control or even accurately count the traffic between particular geographical points.

The burdens associated with preparing the Section 63.10(c) reports are no less onerous merely because dominant carriers are reporting data on fewer routes because the carriers still must establish a reporting process, regardless of whether they are reporting on a single route or on fifty routes. Depending on the size of the company, the number of personnel impacted by the report, and the time to prepare the report, the cost can be significant, and is compounded by the fact that the process must be completed every quarter.

Eliminating burdensome compliance obligations is not a novel activity for the Commission. In 2017, the Commission eliminated the broadcast main studio rule after concluding that rules requiring, among other things, that facilities be located within specific areas to permit community access and certain levels of staffing be maintained, were “outdated and unnecessarily burdensome” on broadcast stations in light of technological advancements and

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<sup>11</sup> 2017 *International Reporting Streamlining Order*, ¶ 1.

alternatives for communities to obtain information.<sup>12</sup> Similarly, the Commission recently eliminated a requirement that cable operators submit certain operational data after concluding that “utility of the form is limited and ultimately outweighed by the burden placed on cable operators to file, and on the Commission to process, this outmoded form.”<sup>13</sup>

**B. The Section 63.10(C) Reports Require Carriers To Report Unnecessary Data**

The Section 63.10(c)(2) traffic and revenue report and Section 63.10(c)(4) circuit status report require carriers who are considered dominant on a particular route to report the same information that the Commission has eliminated entirely for the annual Traffic and Revenue Report and streamlined for the annual Circuit Capacity Report. The logical inference to be drawn from the Commission’s *2017 International Reporting Streamlining Order* is that the Section 63.10(c) reports similarly collect information that is unnecessary or that can be obtained more efficiently and with a more appropriate scope. Retaining the Section 63.10(c) reporting requirement leads to the irrational result of the Commission having stated that the data that is unnecessary and incomplete for all carriers – dominant and non-dominant – when collected on an annual basis is somehow relevant and complete when collected on a quarterly basis from a segment of those carriers.

1. *Traffic and Revenue Reporting*

One of the Commission’s bases for eliminating the Traffic and Revenue report was the incomplete nature of the information collected and the relative ease of obtaining more

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<sup>12</sup> *Broadcast Main Studio Order*, ¶¶3, 6.

<sup>13</sup> *Form 325 Order* ¶1.

comprehensive data. The Commission acknowledged that the Traffic and Revenue Report data “reveal[ed] only a portion of the overall picture of international communications” and did not reflect the true competitive nature of the international marketplace given that certain competitors, such as non-interconnected VoIP providers, were not subject to the reporting obligation.<sup>14</sup> The Commission also admitted that it could rely on commercially available data to obtain “a more complete picture of the international communications marketplace, including non-interconnected VoIP.”<sup>15</sup>

The Commission’s conclusion that the information collected in the Traffic and Revenue Report is incomplete and that better information is readily available equally applies to the Section 63.10(c)(2) report. Section 63.10(c)(2) directs carriers to provide the same data previously collected in the Traffic and Revenue Report.<sup>16</sup> Section 63.10(c)(2) currently requires carriers to: “(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*.”<sup>17</sup> Before the Traffic and Revenue Report requirement was eliminated, the Section 43.62 Filing Manual detailing the Traffic and Revenue Report process required carriers to provide, *inter alia*, “[f]or U.S.-Billed Facilities ICS, aggregate the data for

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<sup>14</sup> 2017 International Reporting Streamlining Order, ¶16.

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

<sup>16</sup> 47 C.F.R. §63.10(c)(2).

<sup>17</sup> 47 C.F.R. §63.10(c)(2) (October 1, 2018 edition) at [www.govinfo.gov](http://www.govinfo.gov) (visited February 8, 2019).

customer revenue, *minutes completed on foreign networks*, and *settlement payouts by foreign point*,”<sup>18</sup> “[f]or *Foreign-Billed ICS*, aggregate data for *minutes and settlement receipts* by foreign point.”<sup>19</sup>

Moreover, vagaries in section 63.10 make these quarterly reports potentially *less* useful than their annual counterparts. Terms used in Section 63.10 are not defined within the rule. Some carriers will look to the FCC’s most recent prior usage and definitions of those terms with respect to international traffic and revenue reporting – the Section 43.62 Annual Report Filing Manual. But others might apply their own definitions, which could ascribe a different meaning when a carrier is reporting international traffic and revenue data on a quarterly basis than in the prior annual reports. The Commission could, of course, amend Section 63.10 to provide greater clarity but this, at most, would result in data of comparable value as the eliminated annual Traffic and Revenue Report. Rather than expend Commission resources on such a senseless endeavor, the Commission should eliminate the Section 63.10(c)(2) report for the same reasons that justified eliminating the annual Traffic and Revenue Report.

## 2. *Circuit Capacity Reporting*

The Section 63.10(c)(4) circuit capacity reporting requirement similarly should be eliminated because certain of the data is adequately captured in the annual Circuit Capacity Report and the Commission recently has determined that the remainder of the data collected is unnecessary.

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<sup>18</sup> Filing Manual for Section 43.62 Annual Reports, DA 15-206, at 14 (Feb. 2015).

<sup>19</sup> *Id.*

In 2017, the Commission streamlined the annual Circuit Capacity Report to eliminate collection of data categories that the Commission acknowledged had a single use. The Circuit Capacity Report was modified to eliminate the requirement to report data on terrestrial and satellite circuits after the Commission concluded that the terrestrial and satellite data was used solely for calculating annual regulatory fees and that the Commission had other means for determining the fees.<sup>20</sup> However, Section 63.10(c)(4), which collects the same information as the original Circuit Capacity Report, has not been similarly modified to remove the satellite and terrestrial circuit reporting.<sup>21</sup>

Once the reporting of terrestrial and satellite circuit data is eliminated, there is no need to retain the Section 63.10(c)(4) circuit capacity reporting requirement as the remaining data – reporting of submarine cable capacity – is adequately captured in the annual Circuit Capacity Report. Should the Commission eliminate the terrestrial and satellite circuit reporting categories, a Section 63.10(c) circuit capacity report would include only data regarding active and idle capacity held on submarine cable systems: “(4) In the case of an authorized facilities-based carrier, file quarterly, within 90 days from the end of each calendar quarter, a report of its active and idle 64 kbps or equivalent circuits by facility (~~terrestrial, satellite~~ and submarine cable).”<sup>22</sup> The submarine capacity data that would be reported under Section 63.10(c)(4) is a

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<sup>20</sup> 2017 *International Reporting Streamlining Order*, ¶17.

<sup>21</sup> 47 C.F.R. §63.10(c)(4) (October 1, 2018 edition) at [www.govinfo.gov](http://www.govinfo.gov) (visited February 8, 2019).

<sup>22</sup> 47 C.F.R. § 63.10(c)(4) (edited to reflect proposed revision).

subset of the same data currently collected in the annual Circuit Capacity Report pursuant to

Section 43.82(a)(2):

(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.<sup>23</sup>

Eliminating the Section 63.10(c) circuit capacity report will not detract from the Commission's knowledge regarding submarine cable information as the Commission will continue to receive the submarine cable capacity information in the annual Circuit Capacity Report. The Commission is acutely familiar with the submarine cable system landing points and easily will be able to discern what carrier holds capacity on a specific route. Consequently, the Commission will continue to receive information regarding, and will be aware of the capacity held on, all submarine cable routes. Should the Commission seek information regarding a specific carrier's capacity holdings, the Commission can utilize its targeted data request process to efficiently collect the information it requires without requiring all carriers to submit data pursuant to the Section 63.10(c)(4) circuit capacity reporting requirement.

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<sup>23</sup> 47 C.F.R. §43.82 (emphasis added).

C. **The 2017 International Reporting Streamlining Order Did Not Distinguish Between Data Provided By Dominant And Non-Dominant Carriers**

The Commission's *2017 International Reporting Streamlining Order* eliminated the annual reporting requirements for all carriers – dominant and non-dominant. The Order did not indicate that data should be treated differently depending on whether it was filed by a dominant carrier or a non-dominant carrier. Significantly, neither the *2017 International Reporting Streamlining Order*, nor the underlying notice of proposed rulemaking, discussed or even mentioned dominant carriers or their quarterly reporting.<sup>24</sup> The logical interpretation of that silence is that the Commission did not intend to distinguish between the data reported by dominant and non-dominant carriers. When addressing the proposed, and final adopted international reporting changes, the Commission chose to use expansive terms such as “filing entities,”<sup>25</sup> “filers,”<sup>26</sup> “providers of international services,”<sup>27</sup> and “capacity holders,”<sup>28</sup> all neutral terms that encompassed both dominant and non-dominant carriers. Deeming the same data as

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<sup>24</sup> See *2017 International Reporting Streamlining Order*; and see also *In re: 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 2606 (2017) (“*International Reporting Streamlining NPRM*.” The lone reference to Section 63.10(c)(2) in the “Final Rules” Appendix to the *2017 International Reporting Streamlining Order*, appears to reflect simple administrative clean-up necessary to remove the reference to “Section 43.62”, now no longer in use, from the Section 63.10(c)(2) rule. *2017 International Reporting Streamlining Order*, Appendix B.

<sup>25</sup> *International Reporting Streamlining NPRM*, ¶¶16, 24. See also *2017 International Reporting Streamlining Order*, ¶27.

<sup>26</sup> *International Reporting Streamlining NPRM*, ¶23.

<sup>27</sup> *2017 International Reporting Streamlining Order*, ¶1.

<sup>28</sup> *Id.*, ¶32.

unnecessary when submitted annually but not unnecessary when submitted quarterly is a prime example of the type of inconsistency the Commission must prevent. The Commission is no stranger to eliminating rules when necessary to promote consistency. The Commission described its actions in its 2018 *Cellular Reform Order* as “advanc[ing] our goal of ensuring more consistency in licensing across commercial wireless services” and explained that the elimination of several rules was “[c]onsistent with one of our key goals in this proceeding to eliminate unnecessary asymmetric regulations.”<sup>29</sup>

In addition, there was no indication in the *International Reporting Streamlining NPRM* or *2017 International Reporting Streamlining Order* that the data the Commission deemed “no longer necessary” for carriers to submit annually,<sup>30</sup> somehow gained relevance when provided by carriers that are dominant on a particular route, even when a carrier holds no market power in the United States. As discussed *supra*, the Commission eliminated the Traffic and Revenue Report because the data was not comprehensive and the collection process was burdensome for carriers.<sup>31</sup> Similarly, the Circuit Capacity Report was streamlined because certain data had one purpose – the calculation of regulatory fees – that was fulfilled in another manner.<sup>32</sup> The Commission did not state or suggest that this data would serve a different

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<sup>29</sup> *In re: Amendment of Parts 1 and 22 of the Commission’s Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area*, 33 FCC Rcd 7017, ¶¶1, 18 (2018).

<sup>30</sup> *2017 International Reporting Streamlining Order*, ¶¶1, 8, 23.

<sup>31</sup> *Id.*, ¶¶13, 16.

<sup>32</sup> *2017 International Reporting Streamlining Order*, ¶31.



purpose or become more comprehensive because it was submitted by a dominant carrier.

Retention of the Section 63.10(c) reports is simply unwarranted.

**III. ELIMINATING THE SECTION 63.10(C) REPORTS WILL NOT HINDER THE COMMISSION'S ABILITY TO ADDRESS ANTICOMPETITIVE ACTIVITIES ON AN INTERNATIONAL ROUTE**

Importantly, obtaining Section 63.10(c) report data is not necessary in order for the Commission to address competitive issues on international routes. The Commission has stated that it would, as a “less burden-some but effective” option, “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.”<sup>33</sup> Accordingly, eliminating the Section 63.10(c) reports will not prevent the Commission from addressing competition issues.

The Section 63.10(c) reporting requirement was established during the nascent stage of the international telecommunications market, a time of little competition, making it easier for carriers to leverage their dominance on an international route, to the detriment of other carriers.<sup>34</sup> The Commission’s assessment of the current competitive status of the international telecommunications market paints a much improved picture with marked improvement in the

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<sup>33</sup> *Id.*, ¶¶8, 20.

<sup>34</sup> *Foreign Participation Order*, ¶¶215-239, 270-286.

indicators of a competitive market.<sup>35</sup> Kelley Drye does not opine on whether the international telecommunications markets are completely or sufficiently competitive but, rather, suggests that increased market competition in conjunction with the alternative sources of data available to the Commission may obviate the need for the Section 63.10(c) reports to identify anticompetitive behavior on a route.

The Firm understands that, for many carriers, changes in telecommunications operations potentially can foreclose a carrier from engaging in the anticompetitive concerns the Section 63.10(c) reporting was intended to identify. It is common today for a carrier to route its traffic dynamically through global platforms that carry voice and data communications to virtually any country, often utilizing providers of routing services that offer access to alternate paths and multiple carriers that can terminate any particular call. This decreases anticompetitive activity, as there are few instances where only one provider can carry or terminate a call. This makes it difficult for a carrier to have bottleneck control on any particular international route. Today's international telecommunications market is no longer dependent solely on the bilateral carrier-to-carrier agreements that were standard before the advent of competition. Additionally, in today's world, much international communication is now taking place via IP-to-IP applications such as Skype and WhatsApp, where voice conversations take place without even touching the Public Switched Telephone Network (PSTN). And as previously noted, as VoIP replaces traditional telephony and blurs jurisdictional considerations, it is difficult to accurately

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<sup>35</sup> See *2017 International Reporting Streamlining Order*, ¶¶15-16 (identifying and discussing substantial decreases in settlement rates as indicative of competitiveness of the telecommunications market).

track and report both ends of a call. Because the Section 63.10 dominant carrier reports were implemented to identify anticompetitive activity on a route, the increase in alternatives and decrease in a carrier's ability to act in an anticompetitive manner eliminate the need for these reports.

To the extent the Commission deems it necessary to continue collecting information to assess anticompetitive activities on international routes, the Commission already has in place more efficient means for obtaining this information. The Commission has established procedures by which U.S. carriers can file complaints alleging anticompetitive behavior and the Commission also is authorized to act on its own motion.<sup>36</sup> In addition, the Commission previously adopted a limited information submission that would allow the Commission to issue targeted data requests to carriers as necessary.<sup>37</sup> The record in the 2017 international reporting streamlining proceeding shows that commenters generally agreed with the Commission's use of targeted data requests to international service providers and data from third party commercial sources,<sup>38</sup> to provide "a less burdensome but effective way of achieving [the

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<sup>36</sup> *Id.*, ¶18.

<sup>37</sup> *Id.*, ¶15. Pursuant to new Commission rule 63.22(h), carriers provided a list of all international routes on which the carrier has a direct termination arrangement with a foreign carrier in the destination market. C.F.R. §63.22(h).

<sup>38</sup> *See* Comments of the United States Telecom Association, IB Docket Nos. 17-55, 16-131 at 10-11 (May 17, 2017) (arguing 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."); Verizon Comments at 4 (asserting 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."); Letter from Sheba Chacko, BT Americas, Inc. to Marlene Dortch, Federal

Commission's] statutory objectives.”<sup>39</sup> This type of industry support for targeted data requests should improve the Commission's ability to receive information when requested.

The data request option also can serve as a more efficient and less burdensome alternative to the Section 63.10(c)(3) provisioning and maintenance report which would seem to be of limited value in light of changes in the international telecommunication market.<sup>40</sup>

Dominant carriers are required to submit a quarterly report providing data on indicators such as the average time interval between order and delivery of circuits and the number of outages and intervals between fault and repair for basic network facilities and services obtained from the carrier's foreign affiliate.<sup>41</sup> However, to the extent the international telecommunications market has become more competitive and technological advances, such as VoIP service, are changing the way services are configured and provided, provisioning and maintenance may be less of a competitive concern. Additionally, in the case of a US entity affiliated with a carrier that is dominant in a different country, it is likely that the foreign regulator has placed dominant carrier regulation on that dominant foreign carrier. Such dominant carrier regulation typically includes

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Communications Commission, IB Docket Nos. 17-55, 16-131, at 1-2 (June 1, 2017) (noting 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.”).

<sup>39</sup> *2017 International Reporting Streamlining Order*, ¶20. *See also, id, fn.76, citing* Section 43.62 Reporting Requirements for U.S. Providers of International Services, 32 FCC Rcd 2606, 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.”).

<sup>40</sup> 47 C.F.R. §63.10(c)(3).

<sup>41</sup> 47 C.F.R. §63.10(c)(3).

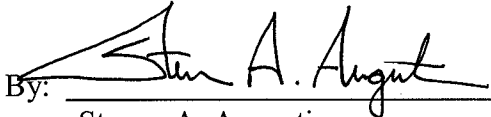
strict non-discrimination rules designed to keep the dominant carrier from using its market power in order to discriminate against other unaffiliated carriers. It seems unlikely that a carrier could receive favorable provisioning and maintenance to the detriment of other carriers, or that such treatment would have a significant impact in the market. If such concerns arose, however, the Commission's complaint process is likely a far more effective method of calling such behavior to the Commission's attention. Consequently, the data in the Section 63.10(c)(3) provisioning and maintenance reports would seem to be of limited value and, like the Traffic and Revenue Reports, the burden to carriers of completing the report would outweigh any benefit. The Commission should eliminate the provisioning and maintenance report and utilize its other, more efficient options for obtaining any necessary information.

#### **IV. CONCLUSION**

For the foregoing reasons, the Commission should eliminate the quarterly Section 63.10(c) report obligations applicable to dominant carriers.

Respectfully Submitted,

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