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

In the Matter of	)	
	)	
Section 43.62 Reporting Requirements for U.S. Providers of International Services	)	IB Docket No. 17-55
	)	
	)	
2016 Biennial Review of Telecommunications Regulations	)	IB Docket No. 16-131
	)	

COMMENTS OF AT&T SERVICES INC.

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AT&T Services Inc., on behalf of its affiliates, ("AT&T") submits these comments on the Notice of Proposed Rulemaking seeking comment on the need for the international services reporting requirements set forth in Section 43.62 of the Commission's rules.[1]

SUMMARY

Both for service providers and the Commission, the Section 43.62 reports have outlived their intended purposes and impose costs that far outweigh any resulting benefits in today's highly competitive U.S. international market. AT&T therefore strongly supports this proposal to remove the annual international Traffic and Revenue report. The Commission also should remove the similarly outdated and unnecessary annual international Circuit Capacity Report.

As the Notice describes, the primary purpose of the international Traffic and Revenue Report has been to monitor high foreign settlement rates. This original purpose no longer

[1] *Notice of Proposed Rulemaking*, IB Docket No. 17-55, FCC 17-28, Mar. 23, 2017 ("*Notice*"). *See also*, *Order*, IB Docket No. 17-55, May 1, 2017 (granting, on the motion of the International Bureau, a temporary waiver of the international traffic and revenue reporting requirements until 60 days after release of a Commission Order in this proceeding).

justifies the burdens imposed by this report, now that foreign termination rates have remained at historically low levels for many years and most Commission regulation that formerly relied on this data is no longer in effect. The Notice also correctly observes that the growing popularity and competitive impact of free international calling services, which are not included in the Traffic and Revenue Report, make the data an increasingly unreliable measure of the true competitiveness of the international marketplace. Moreover, the time required for AT&T's preparation of the Traffic and Revenue Report and associated tasks far exceeds the Commission's estimates. This information is compiled only for this purpose, and the substantial time lag before publication renders the final report of little use in other contexts.

The Commission thus properly proposes to eliminate this outdated regulation and to obtain information to address concerns regarding high termination rates or other competitive issues in the future by specific inquiry. Likewise, the Commission should again decline to impose an unnecessary new burden on U.S. international service providers by requiring the continuous filing of information regarding any above-benchmark termination rates on all routes. The Commission has found that requiring this information to be provided on an as-needed and more targeted basis adequately addresses the Commission's need for this information, and the same approach should be followed here.

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. As with the traffic and revenue information, it appears that the Commission is much more likely to obtain relevant and timely circuit capacity information by making targeted inquiries on an as-needed basis than by using information provided through this annual reporting process. To remove this additional unnecessary burden

on providers, AT&T urges the Commission to go beyond the proposed streamlining of the Circuit Capacity Report, and to eliminate this reporting requirement as well.

I. SECTION 43.62 REPORTS IMPOSE SIGNIFICANT BURDENS ON U.S. PROVIDERS

The Commission's prior estimates show international service providers requiring considerable hours to provide the extensive data required by the Section 43.62 reports, but these estimates still fall short of describing the extent of the time and effort required for AT&T to provide this information. AT&T's preparation of the Traffic and Revenue Report and performance of associated tasks require approximately four times the 203 hours the Commission has estimated for this work.[2] Similarly, AT&T's preparation of the Circuit Capacity Report requires more than nine times the 13 hours estimated by the Commission.

The Traffic and Revenue Report: The filing requirements for the Traffic and Revenue Report, which are set forth in 19 pages of instructions in the Section 43.62 Manual, are complex and require extensive work to provide this data.[3] Facilities-based voice traffic and revenues must be reported separately for each international route with details of the route-specific customer revenue, minutes completed on foreign networks, minutes completed on U.S. networks, settlement payouts and settlement receipts. Minutes completed on foreign networks must be further disaggregated into minutes completed on foreign fixed-line networks and minutes completed on foreign mobile networks.[4] World total voice service revenues must be provided in

[2] *See, Notice*, ¶ 16.

[3] *See, Filing Manual for Section 43.62 Annual Reports*, Feb. 2015, ¶¶ 38-133 (2015) ("*Section 43.62 Manual*").

[4] Data also must be provided for international private line services and international miscellaneous services. *See, id*., ¶¶ 130-133.

a separate report disaggregated by customer category and routing arrangement.

There is no business reason to track the traffic and revenue in the manner required by the Traffic and Revenue Report, so systems are not designed to compile or store information in that manner. To provide this data, AT&T must manually extract revenue data from the different systems that contain the data for the separate businesses that serve its consumer and business customers for these services, as well as settlements data from the systems that serve its wholesale business group, review the data for accuracy and consistency with the required formats, and aggregate or disaggregate data as necessary to meet these formats. AT&T also must obtain the data required to report revenue and/or minutes for other services, including minutes and revenues for its international resale traffic, foreign traffic sent via the U.S. to other foreign points, international private line service revenues, and miscellaneous service revenues. Further time is required to review and certify the report prior to filing with the Commission.

The completion of the annual Traffic and Revenue Report for AT&T Corp. involves eight AT&T personnel in different areas of AT&T's business and approximately 300 hours of work, but not including the additional time required to train new personnel on the reporting requirements when there are job changes, prepare and submit the revised Traffic and Revenue Report as required by Rule 43.62(b)(3), and respond to any subsequent questions by Commission staff.[5] AT&T estimates that these additional tasks require, on average, approximately 100 hours each year for the AT&T Corp. traffic report.

The above hours also do not include the preparation time for the separate annual Traffic

[5] *See*, 47 C.F.R. § 43.62 (b)(3) (requiring the filing of a revised report "identifying and correcting any inaccuracies included in the annual report exceeding one percent of the reported figure").

and Revenue Reports required for AT&T Mobility LLC and several other AT&T affiliates that provide international calling services on a resale basis. These affiliates are required to file their world total minutes and revenues for international resale traffic and to disaggregate these world total revenues by customer category and routing arrangement. To prepare these reports, AT&T personnel must obtain and prepare for filing the relevant data from the different systems that serve these various affiliates. AT&T estimates that the completion of the annual traffic reports filed by these other AT&T affiliates involves more than 28 AT&T personnel in different areas of AT&T's business and approximately 290 total hours, not including the approximately 100 hours that is on average required each year for training, the filing of any revisions to the reports and responding to Commission staff questions.

Thus, the total time required to prepare AT&T's annual international traffic and revenue report data is approximately 790 hours. This comprises: approximately 300 hours for the AT&T Corp. Traffic and Revenue Report, with an additional 100 hours for training, preparing and submitting the revised report, and responding to staff questions; and approximately 290 hours for the separate annual Traffic and Revenue Reports filed by various other AT&T affiliates, again with an additional 100 hours for training, the submission of revised reports and responding to staff questions.

The Circuit Capacity Report: The Circuit Capacity Report requires each facilities-based carrier to list its total active terrestrial and satellite circuits, and each cable landing licensee and common carrier with relevant capacity to provide details of its owned or leased submarine cable capacity on each U.S.-licensed international submarine cable system (the "Capacity Holders

Report").[6] Additionally, one cable landing licensee for each international submarine cable system must list the active and planned capacity of the cable (the "Cable Operators Report").[7]

The Notice (¶ 22) states that the Commission estimated in 2014 that one hour was required to prepare and file satellite and terrestrial circuit data, two hours were required to prepare and file the cable operators report, and ten hours to prepare and file the capacity holders report. However, AT&T has found that the preparation and filing of this data requires approximately 120 hours.

AT&T personnel require, on average approximately 24 hours to compile the satellite and terrestrial circuit data and 16 hours to compile the data required by the Cable Operators Report. The Capacity Holders Report requires two AT&T personnel working for approximately 80 hours to complete. To provide the data sought by this report, AT&T must obtain current ownership schedules for all the U.S.-licensed cables on which AT&T owns capacity, and review the ownership for each segment of the cable, excluding any circuits linking U.S. points, and converting the ownership measures used in these schedules to STM-1 units.[8]

AT&T must also perform similar work to identify the total amount of capacity on each cable that AT&T holds through IRU and inter-carrier lease arrangements, as well as review the relevant records to identify the IRU and ICL capacity that AT&T leases to others, so that the

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[6] *See, Notice,* ¶¶ 134-138.

[7] *Id.*, ¶ 137.

[8] The relevant instructions require reporting providers to list, separately for each cable system on which they own or lease capacity, the total available capacity separately by (1) cable ownership; (2) the "net IRUs leased from other capacity holders less IRUs leased to other capacity holders;" and (3) "net ICLs [inter-carrier leases] leased from other capacity holders less ICLs leased to other capacity holders." *Id.*, ¶ 138. Total capacity held on each cable must be categorized as "activated" or "non-activated." *Id.*, ¶ 139.

"net" amounts of such capacity that AT&T holds on each cable may be determined as required by this report. Because AT&T, like other international providers, uses leased capacity on many cables in addition to those in which it holds ownership interests, in order to, for example, provide increased redundancy in the facilities serving customers or address immediate needs for additional capacity, this work requires the performance of numerous cable-specific calculations.

No Ordinary Business Purpose: AT&T has found both the Traffic and Revenue Report and the Circuit Capacity Report, as well as their predecessor reports, to have little practical use outside the regulatory context. This is largely because of the substantial time lag between the period covered by reported information and the publication date of the report, which is approximately eighteen months for the Traffic and Revenue Report and more than twelve months for the Circuit Capacity Report, by which time much of the information is out of date.[9] Any benefits of such reporting are therefore limited to those obtained by the Commission. AT&T shares the view of the Commission that these are now insufficient to justify the continuation of the Traffic and Revenue Report, and believes that the same conclusion also applies to the Circuit Capacity Report.

II. THE COMMISSION PROPERLY PROPOSES THAT THE TRAFFIC AND REVENUE REPORT SHOULD BE REMOVED

AT&T agrees with Commission's tentative finding that with the far-reaching changes in the international marketplace in recent years, the collection of international traffic and revenue data required by Section 43.62 is no longer necessary for the Commission to perform its duties,

[9] *See*, *2014 International Telecommunications Traffic and Revenue Data*, Jul. 2016 ("*2014 Traffic and Revenue Report*"); *2014 U.S. International Circuit Capacity Data*, Jan. 2016 ("*2014 Circuit Capacity Report*").

and that it imposes burdens on both providers and the Commission that outweigh any remaining benefits.[10] The Commission thus properly proposes to remove the unnecessary burdens imposed by this outdated regulation.

As the Notice describes (¶¶ 4 & 17), neither the market circumstances nor the Commission regulation that required the collection of this extensive data exist today. The international Traffic and Revenue Report dates from 1964 when international voice telecommunications services were provided on a monopoly basis throughout the world, the average rate to terminate U.S. calls in foreign countries was $1.50 per minute, average U.S. revenues for those calls were $3.11 per minute, and there were just 20 million minutes of U.S. international outbound calls per year.[11]

Today, almost two thousand U.S. providers of international calling services file international traffic and revenue data with the Commission, and the global industry is largely liberalized and privatized.[12] Indeed, most countries have "competitive markets covering elements that are essential to the provision of international telecommunication services," and are bound by WTO commitments to maintain those open markets.[13]

The most recent Traffic and Revenue Report shows that the average rate to terminate US calls in foreign countries has fallen to $0.03 per minute, average billed revenues for those calls are $0.04 per minute, and there are more than 84 billion minutes of U.S. international outbound

[10] *Notice*, ¶ 13.

[11] *See*, FCC, *Trends in the U.S. International Telecommunications Industry*, Aug. 1998, Table 3.

[12] *See*, *Notice*, ¶¶ 10 & 17.

[13] *See*, *id.*, ¶¶ 17 & 19, n.38.

calls per year.[14] As highlighted by the Notice (¶¶ 13 & 18) a further significant development is the increasing popularity throughout the world of VoIP services that provide free international calling and that are not included in the report – indicating that even the currently reported traffic and revenue data greatly understate the true competitiveness of the U.S. international market, as well as the total volume of international calling.

The Commission's pro-competitive policies such as the International Settlements Policy ("ISP"), the settlement rate benchmarks policy and the International Simple Resale ("ISR") policy helped to drive many of these changes.[15] As recounted by the Notice (¶ 4), the data collected by the Traffic and Revenue Report assisted in the development and enforcement of these highly successful Commission policies – and also assisted in their ultimate removal as their objectives were achieved, or as they became unnecessary and even in some instances counterproductive with the growth of competition.

The Commission therefore should affirm its tentative findings in the Notice that as the result of these far-reaching market changes and the substantial reduction of regulation benefiting from this information, the annual collection of international traffic and revenue data is no longer

[14] *See*, *id*., ¶ 17. *See also*, *2014 Traffic and Revenue Report*, Table 5.

[15] The ISP prevented monopoly foreign carriers from leveraging competitive U.S. carriers to forestall reductions in settlement rates, but now applies (in partial form) to just one international route. *See*, *International Settlements Policy Reform*, 27 FCC Rcd. 15521 (2012) ("*2012 ISP Reform Order*"). The ISR policy allowed U.S. carriers to enter into flexible termination arrangements on routes where at least 50 percent of traffic was settled at benchmark rates, but ceased to be used when the ISP was removed from benchmark-compliant routes. *See*, *International Settlements Policy Reform*, 19 FCC Rcd. 5709 (2004) ("*2004 ISP Reform Order*"). The objectives of the benchmarks policy of encouraging the reduction of settlement rates to more cost-based levels have largely been achieved now that the average rate to terminate U.S.-outbound calls is a fraction of the lowest benchmark rate. *See*, *International Settlement Rates*, 12 FCC Rcd. 19806 (1997) ("*Benchmarks Order*").

necessary for the Commission to perform its duties and therefore now imposes burdens on U.S. international service providers that far outweigh any resulting benefits.[16] The Commission accordingly should adopt its proposal to remove this unnecessary reporting burden and to rely on more targeted inquiries to the extent it requires such data in the future.

Partial relief from these data collection and filing requirements, as suggested by the Notice (¶ 20, n.42) as a possible alternative approach – such as by removing requirements to report resale, private line, and miscellaneous service data, but retaining requirements that facilities-based providers report route-specific data – would not provide a reasonable remedy. Facilities-based providers would still be required to expend significant resources to collect, review and certify – and for the Commission to review – extensive data that no longer serves any regulatory purpose. The Commission instead should adopt its proposal to remove these filing requirements completely.

Indeed, if the Commission sought to maintain the reporting of route-specific data, recent history indicates that the present burden on providers may increase still further. The Notice (¶ 18) recognizes that the growing use of free international calling services that are not included in the current report "calls into question the continuing value of the overall traffic and revenue data, since such data reveal only a fraction of the overall picture of the international communications, a fraction that is likely to grow smaller over time." This further development is occurring only a few years after the Commission extended the scope of the international traffic and revenue report

[16] *See, Notice*, ¶ 13. *See also*, *id.*, Statement of Chairman Pai, at 1 ("[C]ountless employees spend thousands of hours to prepare, submit and analyze this data. Yet the Commission doesn't need this information to perform its duties. That's because the marketplace for international communications services is by all accounts competitive.").

to include interconnected VoIP services "to ensure these reports accurately reflect international calling markets and trends," and thus required the filing of traffic and revenue data by 354 interconnected VoIP providers that previously did not incur this filing burden.[17] The removal of the report would avoid similar future efforts to increase the relevance of the report to the changing marketplace potentially resulting in the use of even more provider resources to collect, review and certify extensive data for submission to the Commission.

As the Notice states (¶ 19), anticompetitive conduct may still occur periodically on less competitive routes, but the Commission may obtain the data necessary to investigate such issues by making direct inquiry to carriers providing service on the relevant route. In response to the question asked by the Notice (¶ 20) regarding how the Commission could determine which facilities-based carriers have termination arrangements on a route in the absence of reported traffic and revenue data, AT&T would not object to providing to the Commission, on a confidential basis, a list of the routes on which it has termination arrangements with a carrier in the destination foreign country.[18] Such a list would expedite the ability of the Commission to obtain additional confidential information regarding the rates paid on any specific route through

[17] *See*, *Reporting Requirements for U.S. Providers of International Telecommunications Services*, 28 FCC Rcd. 575, ¶ 80 (2013); *2014 Traffic and Revenue Report*, at 1.

[18] Thus, routes on which the U.S. carrier has no agreement with any carrier in the destination country and instead provides service through arrangements with third party carriers in intermediate countries would not be included. Such a list would provide a more useful starting point for inquiries regarding termination rates paid by U.S. carriers in the destination country than the current Traffic and Revenue Report, where the data filed for each international route includes traffic terminated under both direct and indirect routing arrangements. *See*, *Section 43.62 Manual*, ¶ 97 (requiring route-specific traffic and revenue data to be reported "by the destination foreign point, not the intermediate foreign point").

further inquiry.[19]

Since the Commission readily may obtain international traffic and revenue data in this less burdensome manner in order to perform any remaining duties requiring this information, there is no reason to require all international providers to file this information each year. The Commission therefore should adopt its proposal to remove this requirement.

III. THE COMMISSION SHOULD OBTAIN INFORMATION ON NON-BENCHMARK COMPLIANT RATES ON REQUEST RATHER THAN THROUGH A NEW FILING REQUIREMENT

In response to a further question asked by the Notice (¶ 20), the Commission similarly should address any continued need to obtain information on above-benchmark rates on any route through specific inquiry, rather than by adopting a new requirement for the periodic filing of this information. Indeed, the Commission previously proposed requiring U.S. carriers to file or notify to the Commission agreements requiring the payment of above-benchmark rates, but declined to adopt that proposed measure.[20] The Commission made that determination in view of the "problems that may arise for a U.S. carrier with regard to a notice requirement that applies to all routes on a continuous basis," and because it found that requiring such information to be provided only as-needed, and on a more targeted basis, would address its primary uses for this information.[21] For the same reasons, the Commission should adopt the same approach here.[22]

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[19] Such information should presumptively be treated as confidential and exempt from disclosure under 5 U.S.C. § 552(b)(4) and Rule 0.457. The Commission has previously recognized the confidentiality of information relating to U.S. providers' termination arrangements following the removal of the ISP, except where the Commission specifically provides otherwise, and it should apply such confidential treatment here. *See*, 47 C.F.R. § 0.457(d)(v).

[20] *See*, *2012 ISP Reform Order*, ¶ 28.

[21] *Id.*

Any requirement for the continuous submission of information regarding above-benchmark rates that may exist on any international route would impose a significant burden on providers. Calculating those average rates in order to provide such information to the Commission would effectively perpetuate much work that is currently undertaken in order to file the route-specific traffic and revenue information required by the existing Traffic and Revenue report, except that further work would be required to exclude several categories of traffic that have not been found to be subject to the benchmarks.[23] Even though non-benchmark compliant rates may predominate only in a small number of countries, providers would need to compile and review the relevant data for all routes on which such rates may be charged by any of the multiple carriers with which a U.S. carrier may terminate traffic. As a result, providers may need to continually review such data for many international routes.

It would be even more difficult and burdensome for U.S. providers continuously to

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[22] The Commission also should treat the rate information provided in response to those inquiries as presumptively confidential pursuant to Rule 0.457. *See*, n.19, *supra*.

[23] The Commission has not found that U.S.-outbound traffic terminated on foreign mobile networks is subject to benchmark rates. *See*, *The Effect of Foreign Mobile Termination Rates on U.S. Customers*, 19 FCC Rcd. 21395, ¶ 17 (2004) (requesting comment on "the specific application of the 1997 benchmarks policy to foreign mobile termination rates"). Similarly, the Commission has not found that indirectly-routed U.S.-outbound traffic terminated through arrangements with third party carriers in intermediate countries is subject to benchmark rates. *See*, *International Settlements Policy Reform*, 26 FCC Rcd. 7233, ¶ 58 (2011) (requesting comment on the application of the benchmarks to indirect routing arrangements). Accordingly, the rates paid to terminate such traffic would not be relevant to any determination regarding benchmark-compliance and should be excluded from any data submitted for this purpose. Additionally, because the route-specific data filed in the Traffic and Revenue Report includes both directly-routed and indirectly-routed traffic to the foreign destination point, as required by the *Section 43.62 Manual* (¶ 97), even this currently reported data does not provide a sound basis to determine benchmark-compliance. *See*, *Notice*, ¶ 20, n.41.

submit information on above-benchmark rates on the foreign carrier-specific basis on which the benchmarks are enforced.[24] A U.S. provider may terminate traffic with multiple foreign carriers on a route under complex agreements that may be of short duration, include different rates for traffic terminated in different geographic areas, or have rates structured to be reduced substantially once particular volumes are reached. In such circumstances, the U.S. provider may be unable to identify above-benchmark rates based on the terms of its agreements with these foreign carriers and may need to take account of the traffic volumes terminated under each different rate that may apply.

As the Commission previously determined, it is in any event unnecessary to impose such burdensome filing requirements on an ongoing basis. Because this information "will primarily be used for investigating competition problems or high rates to consumers, information involving all routes may not be necessary."[25] The Commission thus determined to address this issue by requiring this information to be provided on request, on an as-needed basis.[26] The Commission thus may make such targeted inquiries at any time as issues requiring such information may arise

[24] The Notice does not state whether such information would be provided on a carrier-specific basis or a route-specific basis, although the enforcement of benchmark rates necessarily is conducted on a foreign carrier-specific basis because its purpose is to "ensure that no U.S. carrier pays" the foreign correspondent seeking a non-benchmark compliant rate "an amount exceeding the lawful settlement rate benchmark." *See*, *Benchmarks Order*, ¶ 186. Additionally, benchmark enforcement previously has been conducted only with regard to carriers deemed to have market power at the foreign end of the relevant routes. *See*, *Petition for Enforcement of International Settlements Benchmark Rates on the U.S.-Fiji Route*, 29 FCC Rcd. 2210 (2014); *Petition for Enforcement of International Settlements Benchmark Rates for Service with Qatar*, 16 FCC Rcd. 16203 (2001); *Petition for Enforcement of International Settlements Benchmark Rates for Service with Kuwait*, 14 FCC Rcd. 8868 (1999); *Petition for Enforcement of International Settlements Benchmark Rates for Service with Cyprus*, 14 FCC Rcd. 8874 (1999).

[25] *See*, *2012 ISP Reform Order*, ¶ 28.

[26] *Id.*

and thereby obtain more focused and timely data than would be provided by periodic reporting.

In addition, providers will include this information in a targeted and current format when initiating any benchmark enforcement petitions and carrier complaints. Under the longstanding policy adopted in the 1997 *Benchmarks Order*, the Commission relies upon U.S. carriers to request enforcement measures when they are unable to negotiate benchmark compliant rates.[27] These carrier-initiated benchmark enforcement procedures require the complaining U.S. carrier to file a petition that "demonstrates that it has been unable to negotiate a [benchmark-complaint] rate with its foreign correspondent."[28] Accordingly, U.S. carriers will identify above-benchmark rates on which they seek Commission action, and the Commission may obtain additional information through direct inquiry to other U.S. carriers serving the route.[29]

Thus, to avoid unnecessary burdens and to improve the relevance and accuracy of targeted information at the time it is needed, the Commission should continue to require the provision of this information on an as-needed basis and on request, as well as through U.S. provider petitions and complaints, rather than through an ongoing reporting requirement.

IV. THE CIRCUIT CAPACITY REPORT SHOULD BE REMOVED BECAUSE THE INFORMATION CAN BE OBTAINED IN LESS BURDENSOME WAYS

These comments have already described how the Circuit Capacity Report imposes burdens to prepare and file reported data that significantly exceed the Commission's estimates for this work. As stated by Chairman Pai, "[h]ere too, [the Commission] should ensure that

[27] *See*, *Benchmarks Order*, ¶ 186.

[28] *Id*. Such petitions must therefore include information concerning the relevant rates.

[29] Providers are also required to provide relevant commercial agreements with their complaints regarding routes with competitive problems. *See*, 47 C.F.R. § 63.22 (g).

reporting requirements are functions of actual need, not agency inertia, and that the benefits of this information collection outweigh the costs."[30] AT&T believes that, for similar reasons to those that have made the Traffic and Revenue Report obsolete, the costs to providers and the Commission of maintaining the Circuit Capacity Report now far outweigh any resulting benefits.

Like the Traffic and Revenue Report, the Circuit Capacity Report is a relic of the monopoly telephone era, when the Commission carefully controlled the expansion of international circuit capacity to ensure that the monopoly provider installed additional circuits only to meet foreseeable demand.[31] But once competitive providers were established in the U.S. international market, the Commission removed this legacy public utility regulation to allow market forces to drive these decisions. [32]

The success of these pro-competitive policies was quickly demonstrated by the massive growth of these facilities as submarine cable circuits became the backbone transmission facilities for the global Internet, electronic commerce and other data communications services that are now major drivers of the global information-based economy.[33] Since 2006, U.S. submarine cable capacity has continued to grow by approximately 30% each year with the continued rapid growth

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[30] *See*, *Notice*, Statement of Chairman Pai, at 1.

[31] *See, e.g.*, *Common Carrier Facilities to Meet Pacific Telecommunications Needs During the Period 1981-1995*, 50 Fed. Reg. 35800 (1985); *Inquiry Into the Policies to be Followed in the Authorization of Common Carrier Facilities to Meet North Atlantic Telecommunications Needs During the 1991-2000 Period*, 53 Fed. Reg. 2285 (1988).

[32] *See, e.g.*, *Tel-Optic Ltd.*, 100 F.C.C. 2d 1033 (1985); *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, 11 FCC Rcd. 12884, ¶ 59 (1996) (removing requirements that applicants for Section 214 authority to construct submarine cables submit information on demand, cost, service quality and other matters).

[33] *See, e.g., 2009 & 2010 Section 43.82 Circuit Status Data*, Mar. 2009 & Mar. 2012, Table 7 (showing that total U.S. submarine cable capacity increased from approximately 430 *thousand*

(Footnote continued on next page)

of these services.[34] In this highly competitive environment, with continually expanding capacity supporting increasing service volumes at lower costs and prices, the Circuit Capacity Report has clearly outlived its original purpose, and the remaining benefits cited by the Notice do not appear to justify the resulting costs.

As the primary stated benefit, the Notice cites (¶ 23) these reports as providing "the prime information needed for any analysis of facilities-based competition." The Notice also states (¶ 6) that these reports assist both policymakers and industry in determining the existence of "sufficient capacity to handle demand" on specific routes, and are used by the Commission to analyze transactions and determinations related to foreign entry. However, as noted by Commissioner O'Rielly, the Commission's ability to request this information on a case-by-case basis appears to remove any such need for this reporting.[35] Indeed, the Notice properly proposes (¶ 19) to rely on such inquiries to address any competitive issues requiring traffic and revenue information on individual routes, but does not explain why the same approach would not allow the Commission to obtain cable circuit capacity information for similar purposes.[36]

The Notice also states (¶ 7) that the report is used by the Commission and other agencies for national security and public safety purposes to provide information about "key routes," the

(Footnote continued from previous page)

circuits in 1995 to 382 *million* circuits in 2010).

[34] *See*, *2014 Circuit Capacity Report,* at 1.

[35] *See*, *Notice*, Statement of Commissioner Michael O'Rielly, at 1 ("If the information is needed to evaluate the state of competition in the case of a transaction, it appears that we could obtain this information upon request, where necessary.").

[36] As previously noted, these reports are not published on a sufficiently timely basis to provide meaningful assistance to industry decision making.

existence of "alternative cables or satellite facilities" to reach "specific locations" and the ownership and control of submarine cable capacity. But the Circuit Capacity Report collects no information regarding key routes to any destination, or alternative cable or satellite routes, so the removal of this report would not affect the use of this information for these purposes. The only such information included in the published report is foreign landing point information that is not reported pursuant to Section 43.62 and rather appears to be derived from cable landing license applications filed pursuant to Section 1.767.[37]

While the Circuit Capacity report does contain information on the ownership and control of submarine cable capacity, ownership information for each submarine cable system is also filed with the Commission with each cable landing license application,[38] as well as with applications to transfer control of or assign interests in cable systems.[39] This already-available information may serve the cited purposes in some instances, and details of subsequent changes to this information may be obtained by specific inquiry. Such inquiries also would provide more up-to-

[37] *See*, *2014 Circuit Capacity Report*, Attachments A & B (U.S. International Submarine Cables – Landing Points, Sorted by Region, Cable, and Foreign Landing Point). This submarine cable landing point information appears to be derived from the cable station information that is filed with each cable landing license application pursuant to Rule 1.767(a)(5) (which requires "[a] specific description of the cable landing stations on the shore of the United States and in foreign countries where the cable will land," together with "a map showing specific geographic coordinates").

[38] *See*, 47 C.F.R. § 1.767(a)(7) (requiring "[a] list of the proposed owners of the system, including each U.S. cable landing station, their respective voting and ownership interests in each U.S. cable landing station, their respective ownership interests in the wet link portion of the cable system, and their respective ownership interests by segment in the cable.");

[39] *See*, 47 C.F.R. § 1.767(a)(110(i) (requiring specification of "on a segment specific basis, the percentage of voting and ownership interests being transferred or assigned in the cable system, including in a U.S. cable landing station.").

date information than may be obtained through the Section 43.62(a) reporting process.[40]

Lastly, there is no reason to maintain these reports to allow the Commission to assess regulatory fees, which is a further use of this reporting requirement identified by the Notice (¶ 23). As the Notice goes on to suggest (¶ 24), the Commission could require the payors of these fees to submit the supporting data when they pay the fee, rather than in this report. Under this approach, the payor of the system-based regulatory fee for each cable system would report the capacity of the cable system with the annual fee payment. Similarly, satellite and terrestrial providers, which are subject to circuit-based fees, would list their total number of circuits with their fee payments.

It therefore appears that the Commission may remove the Circuit Capacity Report, just as it proposes to remove the Traffic and Revenue Report, without any adverse effects on the performance of its duties or on the availability of information to address the other purposes cited by the Notice. Since the benefits of this report therefore fail to outweigh its resulting costs, the Commission should relieve providers of these burdens, and Commission staff of the need to administer the report, by removing this filing requirement.

[40] As with provider-specific information relating to termination arrangements, provider-specific circuit information provided in response to such inquiries should be treated as presumptively confidential under Section 0.457. *See*, n. 19, *supra*.

CONCLUSION

For the above reasons, the Commission should remove both the Traffic and Revenue Report and also the Circuit Capacity Report. Further, the Commission should not require providers to undertake the burdensome task of identifying non-benchmark compliant rates, except in response to specific Commission inquiries or in the context of a provider-initiated benchmark enforcement action.

Respectfully submitted,

By: /s/ James J. R. Talbot

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