HWG | HARRIS, WILTSHIRE & GRANNIS LLP

1919 M STREET NW
SUITE 800
WASHINGTON DC 20036

TEL +1 202 730 1300
FAX +1 202 730 1301
HWGLAW.COM

ATTORNEYS AT LAW

August 31, 2017

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: IB Docket Nos. 17-55 and 16-131, Notice of Ex Parte Presentations

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206(b)(1), we notify the Commission of *ex parte* presentations in the above-referenced proceedings. On August 29, 2017, Nick Alexander of Level 3 Communications, LLC ("Level 3"), and Kent Bressie and Colleen Sechrest of Harris, Wiltshire & Grannis LLP, counsel for Level 3, DOCOMO Pacific, Inc., Globe Telecom, Inc., GTI Corporation, and the North American Submarine Cable Association (together with Level 3, the "International Carriers and Infrastructure Owners") met with Rachael Bender (Legal Advisor to Chairman Ajit Pai), Nathan Eagan (Acting Legal Advisor to Commissioner Brendan Carr), and Daudeline Meme (Legal Advisor to Mignon Clyburn), to discuss the views of the International Carriers and Infrastructure Owners regarding the Commission's International Traffic and Revenue Reports and Circuit Capacity Reports. On August 30, 2017, the same parties met with Erin McGrath (Legal Advisor to Commissioner Michael O'Rielly) with respect to the same subject. During each meeting, we discussed the attached talking points.

Respectfully submitted,

Kent Bressie
Colleen Sechrest

Counsel for the International Carriers and Infrastructure Owners

cc: Rachel Bender
Nathan Eagan
Erin McGrath
Daudeline Meme

Views of the International Carriers and Infrastructure Owners
IB Docket Nos. 17-55 and 16-131

August 29, 2017

Section 43.62 International Traffic and Revenue Reports

- The Commission should eliminate International Traffic and Revenue Reports.
- These reports no longer serve a meaningful regulatory purpose.
    - Most traffic is handled outside the settlement rate system. A 2015 OECD report concluded that widespread liberalization since the late-1990s onwards led to the abandonment of the bilateral accounting rate system and that "today only a minuscule amount of traffic is settled under traditional arrangements."
    - VoIP-based offerings continue to displace traditional circuit-switched voice calls.
    - The FCC has long acknowledged these trends: the Filing Manual for Section 43.62 Annual Reports states expressly that "[i]n recent years, U.S. International Service Providers and Foreign Service Providers have increasingly provided ICS [International Calling Service] under a variety of non-traditional interconnection arrangements . . . In such cases, service providers enter into payment arrangements for International Call completion Service that do not conform to the traditional accounting rate regime." *See* Filing Manual at 14, fn. 41.
    - The International Traffic and Revenue Reports are not even useful for tracking different interconnection arrangements and payment structures, as the instructions require filers to treat non-traditional payment arrangements as "settlements," "settlement payouts," and "settlement receipts." *Id*.
    - In rare instances where competition-related concerns arise, U.S. carriers can and have petitioned the Commission for stop-payment orders.
- The reporting process is flawed, yielding inconsistent and unreliable results:
    - The filing instructions do not relate to current business offerings or accounting practices.
    - Filers are required to make estimations and use varying methodologies.
    - Filers interpret complicated filing instructions differently.

Section 43.62 Circuit Capacity Reports

- The Commission should also eliminate Circuit Capacity Reports.
- These reports are unnecessary for monitoring competition.
    - The NPRM's statement (¶ 23) about "giv[ing] the agency a clear understanding of which operators have deployed facilities where—the prime information needed for any analysis of facilities-based competition" is simply not true.
        - Particularly in the case of terrestrial facilities, the Commission has zero information about the location of U.S.-Canada and U.S.-Mexico circuits.
    - In fact, the Commission evaluates the anti-competitive potential for a submarine cable at the time of licensing, as part of its regulatory classification analysis, which examines whether a new cable would serve as a bottleneck facility.

    - The Commission no longer authorizes individual circuits under a command-and-control regulatory regime, as it now grants global authorizations facilities-based and resale authorizations.
- These reports are unnecessary for protecting U.S. national security or public safety.
    - The NPRM's statement (¶ 7) about "ensuring that U.S. international telecommunications are safe from disruption" is misplaced, as the Circuit Capacity Reports do not track disruptions at all.
    - The NPRM's statement (¶ 7) about providing "information about key routes" is inappropriately vague.
    - The NPRM's statement (¶ 7) about "alternative cables and satellites available to provide communications" is misplaced, as the Commission does not have the power to direct private operators to use particular facilities. Nowhere in the record is there any evidence that private operators use the Commission's reports to make procurement decisions.
    - Consequently, the NPRM fails to satisfy fundamental administrative law requirements for reasoned decisionmaking.
    - Team Telecom reviews all applications for landing licenses in the US, and therefore covers national security concerns for each new cable that lands in US territory.
- "Because the Executive Branch wants it" is an inappropriate justification for retaining Circuit Status Reports.
    - As an independent regulatory agency, the Commission answers to the U.S. Congress, not the Executive Branch.
    - The Commission must rely on its own statutory authority to collect data. The Executive Branch must do the same, rather than trying to leverage the FCC's oversight over cable landing licensees.
- The NPRM fails to articulate a statutory basis for retaining Circuit Capacity Reports.
    - Neither the Cable Landing License Act nor Executive Order 10530 authorizes the collection of such data.
    - The NPRM fails to articulate why such reports are authorized under the Communications Act, given that submarine cables are not licensed under the Communications Act.
- The NPRM's regulatory-fees justification (¶ 8) with respect to submarine cables does not comport with the reality of the Commission's collection of regulatory fees.
    - Submarine cable operators do not pay capacity-based fees.
        - Two of the active 43 systems pay fractional fees based on a compromise in the 2009 fee methodology, but those fees are based on design capacity, not active capacity.
        - Due to changes in technology, all new systems constructed over the past decade have had active and design capacities far in excess of 20 Gbps.
    - Moreover, the Commission already requires operators to report their capacity at the time of payment of regulatory fees, meaning that the Commission currently double-collects this information.
- Circuit Capacity Reports for terrestrial and satellite circuits only entrench a flawed fee methodology that the Commission has long needed to revise.
- These reports create antitrust problems for consortium systems.

    - By requiring a single Cable Owner report for a consortium system, the Commission requires owners to share with competitors sensitive information about active capacity and upgrades.
- The Capacity Holder report fails to account for how capacity is actually sold.
    - Increasingly, capacity is sold on a fiber-pair or spectrum basis—categories absent from the Commission's reporting regime.

The NPRM Fails to Conduct Meaningful Cost-Benefit Analyses of International Reporting Requirements

- As noted previously, the NPRM's asserted benefits are unsupported, inconsistent with Commission regulatory practice, and/or unacceptably vague.
- On the cost side, the NPRM fails to account for:
    - Costs of reviewing and understanding the lengthy and confusing Filing Manual;
    - Costs of disputing confidentiality requests with Commission staff;
    - Costs of establishing and using technology and policies and procedures;
    - Costs of searching data sources; and
    - Costs to prepare, review, and submit the reports, including coordination across consortium members and review by outside counsel.
- The NPRM has failed to assess meaningful alternative approaches:
    - The Commission may issue tailored information requests in individual proceedings.
    - The Commission may rely upon myriad public sources of current and accurate market information.
    - Aggrieved parties may use the Commission's complaint process.
    - Inter-agency information sharing is available in transaction reviews.

The NPRM Fails to Comply with the Paperwork Reduction Act

- The NPRM fails to show why retention of any of the reporting requirements is the least burdensome means of accomplishing the Commission's regulatory objectives. *See* 5 C.F.R. § 1320.5(d)(1)(i).
- The NPRM fails to demonstrate that the Circuit Capacity Reports do not duplicate other recordkeeping obligations, as the Commission already-collects capacity information in the regulatory fees process. *See* 5 C.F.R. § 1320.5(d)(1)(ii).
- The NPRM fails to show that the international reporting requirements have practical utility. *See* 5 C.F.R. § 1320.5(d)(1)(iii).