

**a. Use of Filing Schedules for Reporting IMTS Traffic and Revenues**

69. We propose to require filing entities to file their annual traffic and revenue reports using four schedules. Schedule 1 would be used for reporting U.S.-billed and foreign-billed facilities IMTS traffic by foreign point. Schedule 2 would be used for reporting world-total data for U.S.-billed and traditional transiting IMTS. Schedule 3 would be used for reporting international private line service. Schedule 4 would be used for reporting international miscellaneous services. The proposed schedules are set out in Appendix E. We seek comment on the proposed schedules.

70. These proposed schedules differ significantly from the schedules set out in the Staff Recommendations in the NPRM.<sup>147</sup> For example, the schedules would not require filing entities to divide the data for IMTS minutes based on how it was settled – either under traditional settlements or other arrangements – as proposed in the Staff Recommendations in the NPRM.<sup>148</sup> We agree with AT&T that, with the changes in the international markets and particularly the removal of the ISP from most routes,<sup>149</sup> most traffic will be settled under commercial arrangements rather than traditional methods.<sup>150</sup> Consequently, we do not believe that we need this information. Other differences between the proposed schedules and those in the Staff Recommendations in the NPRM are discussed below.

**b. Elimination of Billing Codes**

71. We propose to eliminate the current billing codes that filing entities use for filing traffic and revenue data and, instead, have the data filed via the proposed schedules, which do not employ billing codes or require the disaggregation of data at the billing code level. The Staff Recommendations in the NPRM proposed the use of filing schedules which did not use billing codes.<sup>151</sup> Commenters generally supported the proposal to use filing schedules in place of the current billing codes.<sup>152</sup>

72. As discussed in the Staff Recommendations in the NPRM, we have established an intricate set of billing codes to account for various routing and billing arrangements for IMTS traffic.<sup>153</sup> The historical development of these billing codes primarily reflects our effort to track the development of a variety of new methods of handling traffic outside the traditional international settlements process. We now have 12 different billing codes to account for the various ways traffic is handled.<sup>154</sup> Each of these

<sup>147</sup> NPRM Appendix C, 19 FCC Rcd at 6508-35.

<sup>148</sup> *Id.* at 6511, ¶¶ 19-20.

<sup>149</sup> *See 2004 ISP Reform Order*, 19 FCC Rcd 5709; *see also 2011 ISP Reform NPRM*.

<sup>150</sup> AT&T Comments at 9. *See also* Sprint Reply Comments at 2.

<sup>151</sup> NRPM Appendix C, 19 FCC Rcd at 6508, ¶ 7.

<sup>152</sup> Verizon Comments at 9-10.

<sup>153</sup> We originally had asked carriers to report on traffic that “originates” in the United States, traffic that “originates” in a foreign country, and traffic that “transits” the United States. In practice, this simple categorization proved unworkable, because it did not account for all services, such as collect international calls that originate in a foreign country but are billed to the U.S. customer. For this reason, the Common Carrier Bureau altered the definition of traffic to be reported to “traffic billed in the United States” and “traffic billed in a foreign country.”<sup>153</sup> To assist the carriers in filing their traffic and revenue reports, the Common Carrier Bureau developed billing codes to describe telephone traffic that “originates in the United States” (billing code 1) and traffic that “originates in a foreign country” (billing code 2). *See* NRPM Appendix C, 19 FCC Rcd at 6508, ¶ 7.

<sup>154</sup> *2009 International Telecommunications Data*. (The report is available on the FCC web-site at: <http://www.fcc.gov/ib/sand/mniab/traffic/>).

new traffic handling methods have complicated the reporting process and required changes to the section 43.61 requirements and the billing codes used to account for them. With the transition away from the traditional settlement arrangements largely complete in most major markets, we no longer need to require disaggregation of IMTS traffic at the billing-code level.

73. We believe that the use of the proposed schedules set out in Appendix E, which would eliminate the use of billing codes, should substantially simplify the reporting of traffic and revenue information. The proposed schedules would continue to require U.S. Service Providers to report facilities IMTS minutes, revenues, and settlement payouts for U.S. billed traffic and minutes and settlement receipts for foreign billed traffic for each route on which they provide service, but this information would no longer be further disaggregated by billing codes.

**c. Elimination of the Requirement To Report Number of Messages**

74. We propose to eliminate the current requirement that filing entities report the number of IMTS messages (*i.e.*, calls) they carry. We had proposed this change in the NPRM.<sup>155</sup> We there noted that carriers make IMTS settlement payments based on number of minutes carried rather than calls and that we have rarely, if ever, found a need to know the number of telephone messages the carriers handle.<sup>156</sup> As a result, we found no need to continue to require filing entities to report this information.<sup>157</sup> Commenters generally supported the proposal on this point.<sup>158</sup> We seek comment on our proposal to eliminate the requirement to report the number of messages.

**d. Elimination of the Requirement To Report Regional Total**

75. We also propose to eliminate the requirement that filing entities provide regional totals for their route-specific data – both U.S.-billed and foreign-billed IMTS traffic (Schedule 1) and international private line service (Schedule 3). The Staff Recommendations in the NPRM proposed to eliminate this requirement.<sup>159</sup> The commenters supported this proposal.<sup>160</sup> We seek comment on this proposal.

**e. Reporting of Fixed and Mobile Termination Data**

76. On Schedule 1, we propose to require filing entities to disaggregate the minutes terminated on foreign networks and settlement payouts between calls terminated on fixed line networks and those terminated on mobile networks. In recent years, many foreign carriers have instituted significantly different settlement rates for call completion services to fixed-line and mobile networks, and these differences vary substantially by route. We are concerned that the settlement rates for terminating U.S.-billed IMTS calls on mobile networks may be excessive, not based on costs, and possibly discriminatory. U.S. carriers first raised this issue in the ISP Reform proceeding.<sup>161</sup> In response to those

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<sup>155</sup> NPRM, 19 FCC Rcd at 6472, ¶ 28.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> MCI Comments at 2; Verizon Comments at 8.

<sup>159</sup> NPRM, Appendix C, 19 FCC Rcd at 6510, 6512, 6514-16, ¶¶ 15, 23, 33, 40.

<sup>160</sup> Verizon Comments at 10.

<sup>161</sup> See 2004 ISP Reform Order, 19 FCC Rcd at 5749-51, ¶¶ 90-91. See Comments of AT&T Corp. at 31-33; Sprint Comments at 18; MCI Comments at 1-4; MCI Reply at 20.

concerns,<sup>162</sup> we initiated a Notice of Inquiry to examine foreign mobile termination rates<sup>163</sup> and possible adverse effects those rates may have on U.S. users.<sup>164</sup> In that proceeding, we noted that information on foreign mobile settlement rates is generally not publicly available.<sup>165</sup>

77. Because there is little information currently available on mobile settlement rates, we believe the public interest requires us to gather additional information on such rates. To this end, we propose to require entities filing information on facilities IMTS in Schedule 1 to disaggregate the total amount of minutes and settlement payouts for calls they complete on foreign networks between foreign fixed networks and foreign mobile networks. We believe we need this information to monitor the evolution of mobile settlement rates as a basis for taking corrective action if we find such action necessary in the future. We seek comment on this proposal.

**f. Reporting of World Total Traffic by Customer Category and Routing Arrangement**

78. On Schedule 2, we propose to require filing entities to report their world-total IMTS traffic and revenues by customer category (residential and mass market, business and government, U.S. resellers, and reoriginated foreign traffic) and by routing arrangement (U.S.-billed facilities IMTS, IMTS resale, and traditional transiting IMTS). This information appears to be essential to understanding the international telecommunications markets. However, we propose to simplify the approach suggested in the Staff Recommendations in the NPRM.

79. In the Staff Recommendations in the NPRM, it was proposed that carriers report separately for two classes of customers – end users and other carriers. Under that proposal, facilities IMTS would have been reported on a route-specific basis using these two customer categories and IMTS resale would have been reported on a world-total basis using these customer classes.<sup>166</sup> Commenters opposed this additional information collection, arguing that it imposed a significant new burden.<sup>167</sup>

80. After reviewing the comments of the carriers, we continue to believe that we need to obtain information on different classes of customers. Such information is useful for transaction analysis, evaluation of the development of competition, and consumer protection. We also believe that the proposal for carriers to report traffic for “end users” is not specific enough. Rather, we need the traffic data reported separately for residential users and business users. The two classes are sufficiently different that we need information on each category. Because of the importance of resale traffic in competition and merger analysis, we continue to believe that we need filing entities to report traffic and revenues for IMTS sold to other carriers. However, in response to carrier concerns, we propose to simplify the NPRM proposal on this point. Rather than requiring filing entities to make the breakdown on a route-by-route

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<sup>162</sup> See 19 FCC Rcd at 5790, ¶ 90.

<sup>163</sup> Mobile termination rates are charges that mobile carriers charge other carriers to terminate traffic on their network. Typically, U.S. international carriers do not terminate traffic directly with foreign mobile networks and therefore do not pay mobile termination rates directly. Instead, foreign mobile termination rates are passed on to U.S. carriers through the mobile settlement rates they are required to pay their foreign correspondents.

<sup>164</sup> *The Effect of Foreign Mobile Termination Rates on U.S. Consumers*, IB Docket No. 04-398, Notice of Inquiry, 19 FCC Rcd 21395 (2004) (*Foreign Mobile Termination Rate NOI*).

<sup>165</sup> 19 FCC Rcd at 21405, ¶ 19.

<sup>166</sup> NPRM, 19 FCC Rcd at 6510, Appendix C, ¶ 16.

<sup>167</sup> See, e.g., AT&T Comments at 4; Sprint Reply Comments at 1-2; Verizon Reply Comments at 5.

basis, we believe it would be significantly less burdensome for carriers to report this customer information on a world-total basis. We believe that world-total information for all customer categories and routing arrangements would be sufficiently useful for our analytical purposes.

81. Specifically, we propose to require world-total IMTS traffic and revenue data be disaggregated for each of the following customer classes: (1) “residential and mass market;” (2) “business and government;” and (3) “U.S. resellers.” Proposed Schedule 2 also treats as a class of users “reoriginated foreign traffic”—that is, foreign traffic which U.S. carriers reoriginate in the United States and terminate at a foreign point under the same settlement arrangements as U.S.-originated traffic. Such traffic has become an important part of U.S. carriers’ IMTS business. Proposed Schedule 2 would require carriers to report the total minutes and revenues associated with such reoriginated traffic on Line 2.D on a world-total basis. This proposal reflects the above simplification of the Staff Recommendations in the NPRM by limiting disaggregation of IMTS data by customer and routing arrangement only to world-total IMTS traffic data.<sup>168</sup> Obtaining information on service sold to various classes of customers and through various routing arrangements would give us additional information we need to monitor the U.S. IMTS market. The proposal to limit the additional information to world-total data would significantly reduce the amount of data that filing entities would be required to file.

82. We believe our proposed changes would improve the accuracy and relevance of key statistics derived from the data and bring the report into conformance with the market definitions used in various analyses we undertake, including merger reviews. As the telecommunications industry has changed, IMTS has evolved into a two-sector industry – a wholesale sector in which carriers buy and sell bulk IMTS minutes, and a retail sector in which carriers (including those that provide facilities IMTS) sell IMTS minutes to end-users, *i.e.*, residential and business IMTS customers.<sup>169</sup> As we discuss below, the data reported pursuant to our current requirements do not capture information about the split between wholesale and retail traffic or revenue. As a result, the key statistics we derive from the traffic and revenue data may have become increasingly inaccurate.

83. This data collection would capture data that we need for conducting competitive analyses, including those done in transaction reviews. In analyzing transactions, we traditionally evaluate separately three major retail end-user markets: the mass market (residential customers and small businesses), the large business market, and the global telecommunications services market (consisting of services provided to companies with a substantial multinational presence in addition to a U.S. presence).<sup>170</sup> Gathering this information on an annual basis would provide a baseline against which to measure a specific merger proposal. Evaluation of the IMTS industry on the basis of these product markets enables us to ensure that mass market, large business, and global telecommunications service consumers have adequate competitive choices and that all providers of IMTS have adequate access to

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<sup>168</sup> The staff proposed to require carriers to divide their route-specific IMTS minutes and revenues between those received from U.S. end-user customers and from other U.S. carriers. NPRM, Appendix C, 19 FCC Rcd at 6510, ¶ 16.

<sup>169</sup> Facilities IMTS U.S. service providers sell IMTS to IMTS resellers as well as end users. IMTS resellers buy IMTS from facilities IMTS U.S. service providers and other IMTS resellers, and sell IMTS to other IMTS resellers as well as end users. It is worth noting here that a U.S. service provider that provides facilities IMTS may also provide IMTS resale, *i.e.*, they may buy IMTS from other U.S. service providers.

<sup>170</sup> For purposes of economic analysis, markets are typically defined as groups of services for which customers can find no adequate substitutes. In merger review involving IMTS, we evaluate the effect of the merger on each of the three end-user markets. *See, e.g., SBC/AT&T Merger Order*, 20 FCC Rcd at 18374-77, ¶¶160-67; *Verizon/MCI Merger Order*, 20 FCC Rcd at 18519-22, ¶¶ 170-77.

each class of customers.<sup>171</sup> We can rely on world-total IMTS data for end-user markets instead of route-specific data because we typically analyze end-user markets on a world-total basis, *i.e.*, for all routes combined.<sup>172</sup> Having world-total IMTS traffic and revenue data broken down by customer class and routing arrangement, would help us obtain greater accuracy in its evaluation of competitive conditions in key IMTS retail markets, thus allowing us to protect both carrier and consumer interests.

84. In addition, these data would allow us to calculate an average revenue per minute (ARPM) that more accurately reflects the rates paid by U.S. business and residential consumers. We rely on the ARPM<sup>173</sup> statistics to monitor and evaluate the IMTS rate levels paid by U.S. consumers.<sup>174</sup> The statistics have enabled us to ensure that IMTS rates continue to move towards competitive, cost-based levels, thus ensuring that "all the people of the United States have access to communications services with adequate facilities at reasonable charges."<sup>175</sup> As the IMTS market has evolved into separate retail and wholesale sectors, with carriers that provide facilities IMTS selling significant and growing amounts of wholesale service to other carriers, these ARPM statistics increasingly reflect a mixture of wholesale and retail rates that make them no longer accurate indicators of the rates paid by U.S. consumers. To remedy this problem, we propose to modify our rules to require U.S. Service Providers that provide facilities IMTS, and filing entities that generate \$5 million or more of IMTS resale revenues annually, to report separately world-total data for IMTS sold to other carriers and IMTS sold to residential and business end-users.<sup>176</sup> These data would allow us more accurately to determine whether the reported reductions in ARPM reflect lower rates to consumers. For the above reasons, we seek comment on this revised proposal to require respondents to break their world-total IMTS traffic and revenue information between classes of customers and routing arrangements.

#### **g. Non-Route-Specific Revenue**

85. We propose to require filing entities to allocate their non-route-specific revenues to specific U.S. international routes in proposed Schedules 1 and 3.<sup>177</sup> Non-route-specific revenues are those revenues for international services that are not directly associated with individual calls or, in the case of private lines, with specific lines. They include monthly recurring fees for service plans that include

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<sup>171</sup> The reporting categories we adopt for end users vary somewhat from our traditional market definitions. Instead of requiring separate IMTS data on the mass market, the large business market, and the global telecommunications market, we are requiring filing entities to report separate IMTS data for residential customers and business customers only.

<sup>172</sup> See, e.g., *SBC/AT&T Merger Order*, 20 FCC Rcd at 18374-77, ¶¶ 160-67; *Verizon/MCI Merger Order*, 20 FCC Rcd at 18519-22, ¶¶ 170-77.

<sup>173</sup> The average rate per minute or ARPM is calculated by dividing U.S. billed revenue by U.S. billed minutes. In order to understand the facilities IMTS market, it is necessary to calculate the ARPM for each international IMTS route separately and for all routes combined.

<sup>174</sup> Although some IMTS rate data are publicly available from other sources, the data filed by all companies pursuant to our rules are far more reliable. There are no publicly available rate data for the various categories of IMTS customers or the relative weight of each category in determining aggregate, industry-wide rate statistics. Because we need such information, we find the publicly-available information not to be a substitute for section 43.61 data.

<sup>175</sup> 47 U.S.C. § 151.

<sup>176</sup> To the extent that providers of interconnected VoIP services sell international services to other providers for resale to end users, they will also report world-total information for such resold services.

<sup>177</sup> Filing entities report IMTS resale traffic and revenue on a world-total basis on Schedule 2, and thus do not need to allocate non-route-specific revenues to specific routes.

international service and other revenue that cannot be identified with particular destination countries. The current Section 43.61 Filing Manual does not address how these revenues should be treated. Some carriers may be allocating these non-route-specific revenues to specific U.S. international routes, but others may not be reporting them at all.

86. As retail IMTS competition has increased, non-route-specific revenue from calling plans and other sources has become an increasingly important component of filing entities' revenues. Most IMTS providers have introduced calling plans which typically require a user to pay a fixed monthly fee in return for discounted per-minute usage charges. Such calling plans have become increasingly popular, and a substantial amount of mass market IMTS is currently sold through these calling plans. These calling plans may be only for international calls, either world-wide or for a specific region, or may include both domestic and international calls. Because calling plan revenues are substantial, failure to report them may result in a serious understatement of U.S.-IMTS service providers' international revenues. Moreover, unless calling plan and other non-route-specific revenues are included in the reported data, we cannot measure accurately key statistics for international services, such as average rate per minute.

87. The Staff Recommendations in the NPRM proposed that filing entities report non-route-specific revenues as an aggregated world-total amount.<sup>178</sup> Commenters opposed this approach.<sup>179</sup> We propose not to adopt that Staff Recommendation. We believe it would be more useful for IMTS providers to allocate their non-route-specific revenues in a way that relates those revenues to the providers' international traffic.

88. We seek comment whether to set out a specific allocation method or to allow each filing entity to determine an allocation method appropriate for its unique situation. In either case, the allocation method should use economic cost principles or other reasonable allocation methods. For example, the monthly fee for a calling plan for Latin America could be allocated between the destination points in the plan based on the relative share of minutes to those destination points. We seek comment whether allowing filing entities to determine the allocation method will result in data that may not be consistent between filing entities and the significance of any possible inconsistencies.

89. We also propose that filing entities identify the percentage of revenue for U.S.-billed IMTS subject to the allocations procedures in Schedule 2. This information would provide us with important information about the use of calling plans and the extent of non-route-specific revenue, as well as provide a verification that non-route-specific revenue has been allocated to individual routes, as required. We seek comment on these proposals.

#### **h. Reporting of Traditional Transit Traffic**

90. We propose to have filing entities report traditional transiting traffic on a world-total basis on Schedule 2. Carriers are currently required to report separately their traditional transit traffic on a route-by-route basis.<sup>180</sup> Since transiting traffic is subject to the settlement arrangements between the foreign service providers in the origination and termination countries, and not the U.S. service provider's settlement agreement, it is not appropriate to include the settlement payouts and receipts for those calls in the data for the route. Indeed, including such fees in a route could skew the average settlement payouts

<sup>178</sup> NPRM, Appendix C, 18 FCC Rcd at 6511, ¶ 18.

<sup>179</sup> See, e.g., AT&T Comments at 6; MCI Comments at 5.

<sup>180</sup> Section 43.61 Filing Manual at 15. Traditional transiting is reported under billing code 3.

and receipts for that route. We also do not believe that it is necessary to have the fees paid to the U.S. service provider for transiting traffic broken down by route for any of our analytical purposes. We seek comment on this proposal.

**i. Reporting of Reoriginated IMTS Traffic**

91. We propose to retain the requirement that filing entities include the terminating leg of traffic that they reoriginate for a foreign carrier in their route-specific data on Schedule 1, but no longer report the originating leg. Filing entities would also report reoriginated traffic on a world-total basis on Schedule 2. Carriers are currently required to report U.S.-billed IMTS traffic they sell to foreign carriers (*i.e.*, “hubbed” or reoriginated foreign traffic) on a route-by route basis separately from other U.S.-billed calls, under our billing code schema.<sup>181</sup> We propose to no longer require filing entities to break out such traffic separately, but instead have filing entities add such traffic to the other IMTS traffic they report for each route. In addition, we propose to require filing entities to report hubbed or reoriginated traffic on a world-total basis. This information would allow us to assess more accurately the importance of the United States as a hub for the provision of global telecommunications services while lessening the overall detail of IMTS data that filing entities are required to report. We seek comment on this proposal.

**j. Reporting of Spot Market Traffic**

92. We propose that filing entities should report IMTS traffic that goes through a “spot market” as part of their facilities IMTS or resale IMTS, as appropriate. The Staff Recommendations in the NPRM proposed that filing entities should also report world-total traffic and revenue data for traffic taken from the spot market for which the filing entity provides foreign termination.<sup>182</sup> We do not propose to adopt this Staff Recommendation. We seek comment on our revised proposal to have filing entities just include traffic that goes through a “spot market” in their reports for facilities IMTS and resale IMTS.

93. A “spot market” is a market where IMTS providers can buy or sell call completion services for calls, including IMTS calls. A customer of the spot market enters into a contract with the spot market owner to buy or sell call completion services by interconnecting at a spot market point of presence. The spot market owner acts as broker by facilitating the exchange of calls between spot market customers, who may not know each other’s identity. Because spot markets allow carriers to shop for the lowest cost termination service to a particular destination they have become important components in the overall IMTS market.

94. Our proposed reporting requirements for spot market customers are unchanged from requirements currently in place, which apply to all IMTS providers, whether or not they interconnect at a spot market switch. A customer of a spot market should report an IMTS call exchanged at a spot market in the United States the same way it would report an IMTS call exchanged directly with another service provider. If it purchases call completion services for U.S.-billed IMTS by interconnecting at a spot market point of presence in the United States, it should report the call as IMTS resale. If it provides call completion services by interconnecting at a spot market point of presence in the United States, the call should be reported based on how the customer arranges to complete the call – if it hands the call off to another U.S. service provider for completion, it would be reported as IMTS resale; if it hands the call off to a foreign service provider for completion, it would be reported as facilities IMTS.

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<sup>181</sup> See *Clarification of Section 43.61 International Traffic Data Reporting Requirements*, Public Notice, DA 98-1369 (rel. July 9, 1998) at 3; available at <http://www.fcc.gov/wcb/iatd/intl.html>.

<sup>182</sup> NPRM, Appendix C, 19 FCC Rcd at 6512, ¶ 25-26.

95. Our proposal here would clarify the current reporting obligations of spot market owners. Spot market owners would not have to report any traffic where they operate in the United States, but merely act as an intermediary to connect two customers at a single point of presence. To the extent, however, that a spot market owner hauls IMTS traffic between two points of presence, either within the United States or between the United States and a foreign point, it would be responsible for reporting traffic and revenue. An owner of a spot market that provides transmission service for a call, and not just switching at a single point between other service providers, would be required to report the calls as IMTS. If the transmission service is between points in the United States and the call is then handed off to another carrier for termination in the destination then the spot market owner would report that call as IMTS resale. To the extent that the spot market owner carries the call from the United States to a point outside of the United States and then hands the call to another carrier for termination, the spot market owner would report the call as facilities IMTS.

**k. Reporting of IMTS Resale Traffic**

96. We propose that service providers with less than \$5 million in IMTS resale revenues for the annual reporting period, and who do not provide facilities IMTS, should be exempted from filing their IMTS resale traffic and revenue. We also propose to eliminate the requirement that filing entities submit a list of the destinations to which they provide IMTS resale service. Currently carriers must report their IMTS resale traffic and revenues on a world-total basis no matter how much revenue they received and must file a list of the countries where the calls were terminated.<sup>183</sup>

97. In the NPRM, we sought comment whether to establish a \$5 million revenue threshold for reporting IMTS resale traffic and revenues.<sup>184</sup> The commenters supported the establishment of a revenue threshold to exempt certain service providers from reporting IMTS resale traffic and revenue, although two commenters suggested that rather than \$5 million the threshold should be 10 percent of total IMTS resale revenues.<sup>185</sup> We believe, however, that a 10 percent threshold is too high. In 2009, no IMTS reseller had a 10 percent or greater market share of IMTS resale.<sup>186</sup> As a result, were this proposal in effect in that year, no one would have filed resale IMTS data. That lack of information would have greatly impeded our ability to analyze IMTS markets.

98. We continue to believe that a \$5 million revenue threshold strikes the appropriate balance between capturing a sufficient amount of IMTS resale data useful for analytical purposes and eliminating non-essential reporting requirements for smaller providers who only provide IMTS on a resale basis and whose traffic and revenues comprise a small amount of the total IMTS resale market. Many carriers who only provide IMTS on a resale basis have very low IMTS traffic volumes and revenues. For example, 1,232 carriers reported traffic and revenue from IMTS resale service in 2009.<sup>187</sup> Of those, 644 carriers reported IMTS resale revenues of less than \$10,000; 1,025 reported IMTS resale revenues of less than \$500,000; and 1,068 reported IMTS resale revenues of less than \$1 million.<sup>188</sup> Based on the 2009 data,

<sup>183</sup> Section 43.61 Filing Manual, Section 3, pp. 38-45.

<sup>184</sup> NRPM, 19 FCC Rcd at 6473-74, ¶¶ 32-35.

<sup>185</sup> Cingular Comments at 7-8; Verizon Wireless Reply Comments at 3-4.

<sup>186</sup> In 2009 total IMTS resale revenues were \$7.4 billion. See 2009 International Telecommunications Data Table D. Using the Cingular/Verizon Wireless proposal, the threshold would have been set at \$740 million. No carrier had IMTS resale revenues of that amount. The carrier with greatest revenues reported revenues of \$660 million, representing 8.9% of IMTS resale revenues that year. See 2009 International Telecommunications Data.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

the 1,068 carriers that reported less than \$1 million in revenues collectively accounted for one percent of total reported U.S. IMTS resale revenues for 2009. Stated another way, the revenue information provided by the remaining 164 larger IMTS resale carriers account for 99 percent of the IMTS resale market. With a \$5 million threshold, 86 carriers would file revenue information that would comprise 96 percent of the IMTS resale revenues. We seek comment on our proposal to adopt a \$5 million revenue threshold for reporting IMTS resale traffic and revenue for service providers that only provide IMTS resale service.

**l. Reporting of Country-Beyond and Country-Direct Services**

99. We propose that filing entities include country-beyond and country-direct services, as well as call-back services, in the data on U.S.-billed services to be filed on Schedule 1. The Staff Recommendations in the NPRM proposed that carriers report country-beyond and country-direct calls on a world-total basis separately from the reporting of U.S.-billed IMTS.<sup>189</sup> The commenters opposed this approach, arguing that these services should continue to be included in the total U.S.-billed data rather than being reported separately, even on a world-total basis.<sup>190</sup> We agree with the comments and do not propose to adopt the approach suggested in the Staff Recommendations in the NPRM. Rather, as the commenters request, we propose that filing entities include these services in their U.S.-billed traffic and revenues data. We seek comment on this revised proposal.

**m. Reporting of Private Line Service**

100. We propose to adopt a number of the changes in the reporting of private line service proposed in the Staff Recommendations in the NPRM. We propose, however, to change some of those recommendations to simplify further the reporting of private line data. We propose that filing entities report data regarding their common carrier private line services on Schedule 3.

101. We propose to eliminate the current requirement that filing entities break down their private line service data into six categories based on the speed (bits per second) of the service.<sup>191</sup> We believe it would be sufficient to require filing entities to report the total number of private line circuits they provided, expressed in 64 kilobit per second (kbps) equivalents. We have found that information on the total number of 64 kbps equivalent circuits has been more useful in our competitive analyses and in our analyses of carrier transactions.

102. We propose to continue to require filing entities to report their private line services provided over owned facilities on a route-specific basis. We do not propose, however, that filing entities should report their private line services provided over resold facilities on a route-specific basis, as suggested in the Staff Recommendations in the NPRM.<sup>192</sup> We propose that filing entities report their circuits and revenues for service provided over resold circuits on a world-total basis only. The underlying provider of these circuits would still be reporting them on a route-specific basis, so we would still get an accurate total of overall circuits used for private line service on a route-specific, as well as those that are resold on a world-total basis.

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<sup>189</sup> NPRM, Appendix C, 19 FCC Rcd at 6512, ¶¶ 25-26.

<sup>190</sup> AT&T Comments at 5-6; Verizon Reply Comments at 5; Letter from Douglas W. Schoenberger, AT&T, to Marlene H. Dortch, FCC, dated December 1, 2005, Attachment at 2.

<sup>191</sup> Filing entities currently are required to report their international private lines in six categories: (1) voice circuits, (2) up to 1200 bps, (3) 1201 bps to 9600 bps, (4) 9601 bps to 30 Mbps, (5) greater than 30 Mbps to 120 Mbps, and (6) greater than 120 Mbps. *Section 43.61 Filing Manual* at Section 1. C. 4.

<sup>192</sup> NPRM, Appendix C, 19 FCC Rcd at 6514, ¶ 32. These Staff Recommendations were developed by Commission staff in order to suggest ways to simplify and clarify reporting requirements.

103. We believe that these changes would significantly reduce the amount of data that filing entities need to file for international private line services, while providing us adequate data for any likely required analysis of private line services. We seek comment on these proposals.

**n. Reporting of Data Services**

104. We propose that filing entities report their data services with miscellaneous services rather than their private line services. Traditionally, carriers offered private line service by establishing a dedicated circuit between two or more customer locations, allowing the customer to use such circuit to transmit an unlimited amount of customer information between the customer locations for a fixed period of time – usually a month. More recently, carriers have supplemented such dedicated circuits with services such as virtual private lines that consist of making a transmission network available for the use of the customer, rather than a dedicated line. Still more recently, carriers have introduced other services, based on a variety of transmission protocols, that similarly involve a customer's use of a network-based service rather than a dedicated private line.

105. The current filing manual requires carriers to report such network-based private line services on the same per-route basis that they use for dedicated lines.<sup>193</sup> We believe, however, that such treatment may no longer be appropriate. Although such services look to the customer as similar to dedicated private lines, in that both are used to transmit customer data between customer locations, we believe they may more appropriately be viewed as a data service.

106. The NPRM proposed that filing entities report data services along with private line services.<sup>194</sup> This would have required that data services be reported on a route-specific basis.<sup>195</sup> Consequently, we do not propose to adopt our initial proposal to require filing entities report data services on a regional total basis.<sup>196</sup> Rather, we propose that filing entities report their international data services on a world-total basis as “miscellaneous services” except for components of such services that are provided as U.S. international circuits for exclusive use by an individual customer, and thus classifiable as international private line service. We believe that such world-total revenue data would provide us sufficient information to monitor the international data services market, while simplifying the information filing entities must provide. We seek comment on this proposal.

**o. Reporting of International Data and Miscellaneous Services**

107. We propose to require filing entities to continue to file data regarding their miscellaneous services.<sup>197</sup> At present, carriers report data for traffic volume, revenue, and payouts to foreign carriers by world region for each miscellaneous service that they provided. As discussed in the Staff Recommendations in the NPRM, we propose to streamline the reporting requirements for miscellaneous services by eliminating the current requirement to report by world region and to report traffic volumes (e.g., minutes, messages, lines, etc.) or payouts to foreign carriers.<sup>198</sup> Further, we propose to streamline

<sup>193</sup> See *Further Clarification of Section 43.61 International Traffic Data Reporting Requirements*, Public Notice, DA 99-1332 (rel. July 7, 1999) at 3; available at <http://www.fcc.gov/wcb/iatd/intl.html>.

<sup>194</sup> NPRM, Appendix C, 19 FCC Rcd at 6514-15, ¶¶ 35-36.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* at 6515-16, ¶¶ 39-40.

<sup>197</sup> In 2009, seven carriers filed information for five miscellaneous services: Frame Relay/ATM, Packet Switching, TDM/TDMA service, virtual private line and virtual private network. 2009 International Telecommunications Data, Table C.

<sup>198</sup> NPRM, Appendix C, 19 FCC Rcd at 6515, ¶ 39.

the reporting requirement for miscellaneous and data services by only requiring filing entities to report services for which they have revenues of \$5 million or more.<sup>199</sup> Filing entities would report each of their miscellaneous and data services with \$5 million or more in revenue on Schedule 4 by providing the name of the service, a brief description of the service, and the world total revenue for the service.

108. We believe that there is continued value in receiving data for these services from filing entities and that a \$5 million threshold is appropriate. Such data can signal the emergence, growth, or decline of miscellaneous services in the international markets, and can provide a mechanism by which filing entities can account for all of their revenues from international telecommunications services. The commenters disagree, however, on the size of the revenue threshold we should use.<sup>200</sup> We continue to believe that a \$5 million revenue threshold for reporting international data and miscellaneous services would provide us with sufficient information about these services, while reducing the amount of data filing entities will need to report.<sup>201</sup>

109. We do not propose, however, to adopt the alternative approach set forth in the NPRM to exempt altogether certain specific miscellaneous services from the reporting requirement regardless of the revenue generated by that service.<sup>202</sup> We believe that exempting specific services, regardless of the amount of revenues they yield, would not allow us to keep track of developments in the industry. We believe, rather, that the proposed revenue threshold for reporting a service strikes the appropriate balance between reducing the amount of information filing entities would be required to file and ensuring that we have an accurate view of the market. The revenue threshold would ensure that new services with significant growth would automatically become subject to the reporting requirement when the revenues for that service exceed \$5 million and that declining services would no longer be reported when the revenues fall below the threshold. We seek comment on these issues.

**p. Use of Statistical Methods for Reporting Traffic Information**

110. The usefulness of the data collected depends critically on the provision of accurate information by filing entities. Filing entities should therefore, to the maximum extent possible, provide actual counts of minutes, circuits, revenues, payouts, etc. Where that is not possible, we propose to allow filing entities to use estimation procedures, such as statistical sampling, that are designed to produce a margin of error of no more than one percent with a confidence interval of 95 percent.<sup>203</sup> We also propose

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<sup>199</sup> Based on 2009 international traffic and revenue information, a \$5 million filing threshold would have required two carriers to file information on two miscellaneous services. *See* 2009 International Telecommunications Data, Table C.

<sup>200</sup> MCI Comments at 3-4 (in addition to the \$5 million threshold the Commission should add a threshold of 0.10% of the filing entity's total revenues reported); Sprint Comments at 5-6 (the Commission should reduce or eliminate this threshold if miscellaneous services are to be reported).

<sup>201</sup> Sprint supports the concept of a threshold, although it argues that the proposed threshold was relatively high and might exclude some important services. Sprint Comments at 5-6. Sprint's concerns appear to center around how inconsistent carriers are in what they report for miscellaneous services and that many carriers may not be reporting services that they should. We agree with Sprint that the current filing manual may not give the filing entities sufficiently clear criteria on what services they should report. Accordingly, we shall direct the Chief of the International Bureau to address Sprint's concern when drafting a new filing manual. *See* para. 62, *infra*.

<sup>202</sup> NPRM, 19 FCC Rcd at 6476, ¶ 42.

<sup>203</sup> *See* Universal Service Contribution Methodology; WC Docket Nos. 06-122 and 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170, *Report and Order and Notice of Proposed Rulemaking*, 21 (continued...)

allowing filing entities to use non-statistical estimation techniques that would in good faith be expected to produce accuracy comparable to that specified for statistical studies. Filing entities would be required to retain a copy of any estimation studies on which they relied for three years and provide them to the Commission upon request. We seek comment on these proposals.

### 3. Proposed Changes to the Circuit-Status Report

111. As discussed above, we find that we continue to need international circuit-status data.<sup>204</sup> We believe, however, that we can simplify the reporting requirement and still obtain the information that we need. We therefore propose to streamline the circuit-status reporting requirements by eliminating reporting by service categories and the reporting of derived circuits. Filing entities would report their international circuit data on proposed Schedule 5. We seek comment on these proposals.

#### a. Elimination of Service Categories

112. We believe it is no longer necessary to require filing entities separately to report their active circuits for each service category they offer.<sup>205</sup> We agree with AT&T's comments that such information is no longer needed.<sup>206</sup> International circuits are essentially fungible and may be used for any service category. We therefore propose not to adopt the Staff Recommendation in the NPRM to require filing entities to continue to report their circuits by service category or to add a "data services" category.<sup>207</sup> Rather, as shown in proposed Schedule 5, we propose to require filing entities simply to report the number of their active and idle circuits and to indicate whether those circuits are carried on a submarine cable, a satellite, or a terrestrial facility. However, it appears to still be useful to require filing entities to continue to report the number of active and idle circuits separately for each class (*i.e.*, cable, satellite or terrestrial) of facility. We seek comment on this proposal.

#### b. Elimination of Reporting Derived Circuits

113. We propose to eliminate the requirement that filing entities report the additional circuits they derive from their 64 Kbps equivalent circuits through the use of circuit-multiplication equipment (*i.e.*, derived circuits). The Staff Recommendations in the NPRM proposed to eliminate this requirement.<sup>208</sup> No commenters specifically addressed this issue.

114. The Section 43.82 Filing Manual currently requires carriers to report information about circuits derived from circuit-multiplication equipment.<sup>209</sup> This requirement was added at a time when carriers used equipment referred to as circuit multiplication equipment that allowed them to carry more

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FCC Rcd 7518, 7536, n.115 (2006) (*2006 Universal Service Order*) (describing the statistical sampling that may be used for traffic studies used for determining the amount of interstate traffic for universal service contributions).

<sup>204</sup> See Section III.F, para. 47-49, *supra*.

<sup>205</sup> Carriers are currently required to report their active international circuits in three service categories: (1) IMTS, (2) international private-line service, and (3) miscellaneous or other international services. *Section 43.82 Filing Manual* at Section 1. C.

<sup>206</sup> AT&T Comments at 11-12.

<sup>207</sup> NPRM Appendix C, 19 FCC Rcd at 6516, ¶ 43.

<sup>208</sup> NPRM Appendix C, 19 FCC Rcd at 6516, ¶ 43.

<sup>209</sup> Section 43.82 Filing Manual at 14-16.

simultaneous IMTS calls than the number of voice-grade bearer circuits in use.<sup>210</sup> We wanted to monitor the use of circuit multiplication equipment. Now, however, circuit-multiplication is no longer an issue. As a result, there appears to be no reason to continue to require carriers to report derived circuits. We seek comment on this tentative conclusion.

**c. Retention of 64 Kbps Reporting Units**

115. We propose to continue the current requirement that filing entities report their circuit data on the basis of 64 kbps equivalent circuits – the standard circuit size for voice grade circuits. The Staff Recommendations in the NPRM sought comment on alternatives to the requirement in the current filing manual to report circuits in 64 kbps equivalent circuits.<sup>211</sup> Commenters generally supported replacing the 64 kbps equivalent unit.<sup>212</sup> Although we acknowledge that most transmission facilities have very large capacities that are significantly higher than 64 kbps,<sup>213</sup> some facilities, most notably satellites, have very small circuit counts for some routes. These often are less than 1 Gbps, and so use of 64 kbps is appropriate. In order to keep the reporting standardized, we propose to continue to have filing entities use 64 kbps. We shall include a conversion table in the Filing Manual for the convenience of the filing entities and to make sure all filing entities are filing consistent circuit counts. We seek comment on this tentative conclusion.

**C. Possible New Filing Entities**

**1. Providers of Interconnected VoIP Service**

116. We seek comment whether we should require providers of interconnected VoIP service<sup>214</sup> to submit data regarding their provision of international telephone services under our proposed streamlined reporting rules.<sup>215</sup> Specifically, should we require interconnected VoIP providers to report their international voice traffic and revenue in the same manner that carriers report their IMTS traffic and revenue?<sup>216</sup> International voice traffic generated by interconnected VoIP service appears to constitute a

<sup>210</sup> A voice-grade bearer circuit refers to either 3 or 4 KHz in an analog facility or a 64 Kbps circuit in a digital facility that is suitable for the transmission of a voice call. *Id.* at 16.

<sup>211</sup> NPRM Appendix C, 19 FCC Rcd at 6516, ¶ 42.

<sup>212</sup> Verizon Comments at 6-7.

<sup>213</sup> MCI Comments at 9; *see also* Verizon Reply Comments at 6.

<sup>214</sup> Interconnected VoIP service refers to interconnected Voice over Internet Protocol (VoIP) service, which is a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet Protocol-compatible customer premise equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls to the PSTN. 47 C.F.R. § 9.3.

<sup>215</sup> Although the NPRM did not propose to require interconnected VoIP providers to file traffic and revenue reports, the VON Coalition filed an *ex parte* letter arguing that the reporting requirements should not be extended to interconnected VoIP providers. VON Coalition June 28, 2007 *Ex Parte*. The letter did not address our authority to impose such a requirement on interconnected VoIP providers.

<sup>216</sup> Our decision today to seek comment whether providers of interconnected VoIP services should report their international calls under section 43.62 does not constitute a finding that such services are either "telecommunications services" or "information services." *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4893-94, ¶¶ 43-44 (2004) (seeking comment on the proper classification of particular IP-enabled services as "telecommunications services" or "information services" under the definitions of the Act). Rather, as we discuss, we propose to include interconnected VoIP providers because they (continued....)

significant and growing component of the U.S. international voice traffic market, and we are concerned that we may not be able understand the IMTS market without data regarding international interconnected VoIP traffic. We also seek comment on our legal authority to have interconnected VoIP providers file international traffic and revenue data.

117. Since we last reviewed our international reporting requirements, the introduction of IP-based services has enhanced the ability to communicate internationally. We have recognized that interconnected VoIP services increasingly are viewed by consumers as a substitute for traditional telephone service.<sup>217</sup> Commission data show that end users are increasingly obtaining service from interconnected VoIP providers, such as cable companies.<sup>218</sup>

118. We have taken several actions to keep pace with the new issues presented by this evolution. In 2005, we adopted rules requiring providers of interconnected VoIP service to supply E911 capabilities to their customers as a standard feature from wherever the customer is using the service.<sup>219</sup> Moreover, interconnected VoIP service providers generally must transmit all 911 calls, including Automatic Number Identification (ANI) and the caller's Registered Location for each call, to the Public Safety Answering Points (PSAP), designated statewide default answering point, or appropriate local emergency authority.<sup>220</sup> In 2006, we began requiring interconnected VoIP service providers to contribute to the universal service fund because they are providers of interstate telecommunications.<sup>221</sup> Since 2008, interconnected VoIP service providers have been required to report subscribership information on FCC

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represent an important and rapidly growing part of the U.S. international voice traffic market, and we are concerned we cannot adequately understand the U.S. international voice market without data from them.

<sup>217</sup> See *High-Cost Universal Service Support*, WC Docket No. 05-337; CC Docket No. 96-45; WC Docket No. 03-109; WC Docket No. 06-122; CC Docket No. 99-200; CC Docket No. 96-98; CC Docket No. 01-92; CC Docket No. 99-68; WC Docket No. 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6590 ¶ 205 n.523 (2008); see also *Telephone Number Requirements for IP-Enabled Services Providers*; WC Docket No. 07-243; WC Docket No. 07-244; WC Docket No. 04-36; CC Docket No. 95-116; CC Docket No. 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19547 ¶ 28 (2007).

<sup>218</sup> In June 2010, there were 29 million interconnected VoIP subscriptions in the United States, a 21% increase from June 2009. In June 2010, 28% of residential wireline connections were interconnected VoIP. The percentage of total wireline retail local telephone service connections (business and residential) attributable to interconnected VoIP subscriptions was 19.2% in June 2010 (29 million of a total of 151 million); 15.2% in June 2009 (24 million of a total of 157 million; and 13.4% in December 2008 (22 million of a total of 163 million), the first time period for which the FCC received data. Local Telephone Competition: Status as of June 30, 2010, Industry Analysis and Technology Division, Wireline Competition Bureau (rel. March 2011). In 2009, Comcast reported that it was the third largest residential telephone service provider in the United States, exceeded only by AT&T and Verizon. See Comcast Now Third Largest Residential Phone Services Provider in the U.S., available at <https://www.comcast.com/about/pressrelease/pressreleasedetail.ashx?PRID=844> (last visited April 1, 2011).

<sup>219</sup> *IP-Enabled Services; E911 requirements for IP-Enabled Service Providers*, WC Docket No. 04-36, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10246 (2005) (*VoIP 911 Order and VoIP 911 NPRM*) *aff'd sub nom.* Nuvio Corp. v. FCC, 473 F.3d 302 (D.C. Cir. 2006). In 2008, Congress enacted the New and Emerging Technologies 911 Improvement Act of 2008 that, among other things, amended the 911 Act to codify our E911 rules for interconnected VoIP providers. New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 122 Stat. 2620 (2008).

<sup>220</sup> 47 C.F.R. § 9.5(b).

<sup>221</sup> See *2006 Universal Service Order*, 21 FCC Rcd 7518.

Form 477.<sup>222</sup>

119. For international phone calls, interconnected VoIP service provides essentially the same function to end users as IMTS, but uses the Internet or private IP networks rather than traditional voice-grade IMTS circuits to transmit these calls. Also, interconnected VoIP providers usually have very competitive rates for U.S. international calls.<sup>223</sup> Thus the use of IP-based services such as interconnected VoIP to make international phone calls has been increasing.<sup>224</sup> Indeed, VoIP calls are increasing at a faster rate than traditional IMTS calls,<sup>225</sup> which may explain why the traffic data filed pursuant to section 43.61 shows that IMTS traffic declined in 2007, for the first time since 1985.<sup>226</sup> After a slight rebound in 2008, reported IMTS traffic declined further in 2009,<sup>227</sup> and carriers cited competition from VoIP providers as a major influence on the decrease in reported IMTS traffic.<sup>228</sup>

120. Unlike IMTS, international voice traffic transmitted via interconnected VoIP services goes largely unreported. We seek comment whether this results in our being presented with an incomplete view of international voice traffic volumes and patterns. We also seek comment whether extending our Part 43 reporting requirements to include interconnected VoIP service providers would allow us to track and analyze information about the whole U.S. international calling market, not just those calls that continue to be made over traditional IMTS. We also seek comment on which entities may have

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<sup>222</sup> See 47 C.F.R. § 43.11(a); see also *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rule Making, 23 FCC Rcd 9691, 9704-07 25-31 (2008) (*2008 Development of Data on VoIP Subscriberhip*); *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip*, WC Docket No. 07-38, Order on Reconsideration, 23 FCC Rcd 9800 (2008) (*2008 Broadband Data Gathering Reconsideration Order*). FCC Form 477 collects information about broadband connections to end user locations, wired and wireless local telephone services, and interconnected VoIP services, in individual states.

<sup>223</sup> See, e.g. international calling rates for Vonage available at [http://www.vonage.com/international\\_per-minute\\_rates/?lid=sub\\_nav\\_international\\_rates&refer\\_id=WEBSR0706010001W1](http://www.vonage.com/international_per-minute_rates/?lid=sub_nav_international_rates&refer_id=WEBSR0706010001W1).

<sup>224</sup> Telegeography reports that world-wide international VoIP traffic grew 16% in 2008 and accounted for 92.7 billion minutes, out of 282.8 billion minutes of international traffic world-wide. PriMetrica, Inc., Executive Summary to TeleGeography Report 2 (2009), available at [telecomblogs.in/wp-content/uploads/2010/05/TG10\\_Exec\\_Sum.pdf](http://telecomblogs.in/wp-content/uploads/2010/05/TG10_Exec_Sum.pdf).

<sup>225</sup> Telegeography projects that 27% of world-wide international traffic will be transported as VoIP in 2009. PriMetrica, Inc., Executive Summary to TeleGeography Report 2 (2009), available at [telecomblogs.in/wp-content/uploads/2010/05/TG10\\_Exec\\_Sum.pdf](http://telecomblogs.in/wp-content/uploads/2010/05/TG10_Exec_Sum.pdf). Telegeography stated that international VoIP traffic accounted for 16% of world-wide international traffic in 2005. Telegeography 2006 at 43. See also Thomas Evslin, Chairman, ITXC Corp., Speech before the SuperComm Convention, Atlanta Georgia, June 2, 2003, reported in *Communications Daily*, at page 9, June 3, 2003 (stating that VoIP accounted for more than 10% of international switched voice calls in 2003).

<sup>226</sup> See *International Telecommunications Data reports for 1985 to 2007*. The reports are available at <http://www.fcc.gov/ib/sand/mniab/traffic/>. See also *International Long-Distance Slumps, While Skype Soars*, Telegeography Reports ("Demand for international communications remains strong, notes Telegeography analyst Stephan Beckert. "But ever more people are discovering that they can communicate without the services of a telco.").

<sup>227</sup> See 2009 International Telecommunications Data, at 1.

<sup>228</sup> FCC Releases 2009 International Traffic Data, News Release (April 8, 2011) at 1.

access to the information that would be needed to provide international traffic and revenue data for interconnected VoIP service. We use the data collected on international traffic and revenues to determine U.S. international calling patterns and rates for all international calls by U.S.-end users, including the average rate per minute.

121. Further, we seek comment whether requiring interconnected VoIP service providers to meet certain of the Commission's Part 43 reporting requirements is reasonably ancillary to the effective performance of the Commission's statutory obligations under the Communications Act.<sup>229</sup> Section 2 of the Act grants the Commission jurisdiction over "all interstate and *foreign communication* by wire or radio."<sup>230</sup> Moreover, the Commission has a statutory obligation, among other things, to make available world-wide communication service with adequate facilities at reasonable charges.<sup>231</sup> We also have jurisdiction over international common carrier services under section 201(b) of the Act, which places an obligation on us to ensure that common carrier services are provided in a "just and reasonable" manner.<sup>232</sup> Section 201(a) of the Act makes clear that the services subject to our section 201(b) obligation include international services.<sup>233</sup> The Communications Act recognizes that we need to collect information regarding the market to ensure that it is fulfilling its obligations under section 201(b) by providing specific authority to collect such information from common carriers in sections 211, 219, and 220. Furthermore, the Act specifically authorizes us to require annual reports from all carriers subject to the Act,<sup>234</sup> as well as to require the production of other information "necessary to enable the Commission to perform the duties and carry out the objects for which it was created."<sup>235</sup>

122. As we have discussed, the primary goal underlying our reporting requirements for international carriers has been and continues to be the protection of U.S. consumers and carriers from harm caused by insufficient competition in the U.S. international telecommunications markets.<sup>236</sup> Our

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<sup>229</sup> See 47 U.S.C. §§ 151, 211, 218, 219, 220.

<sup>230</sup> *Id.* § 152(a) (emphasis added). "Foreign communication" is defined as "communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States." 47 U.S.C. § 153(21).

<sup>231</sup> 47 U.S.C. § 151. We cite Section 1 of the Communications Act to help illuminate the scope of our authority pursuant to the Title II provisions we cite here. See *Comcast v. FCC*, 600 F.3d at 654.

<sup>232</sup> 47 U.S.C. § 201(b).

<sup>233</sup> 47 U.S.C. § 201(a) ("... interstate and foreign services ...") (emphasis added).

<sup>234</sup> 47 U.S.C. § 219 (authorizing us to require annual and other reports); see also 47 U.S.C. § 211 (authorizing us to require the filing of contracts, agreements, and arrangements related to any traffic affected by the provisions of the Act); 47 U.S.C. § 220 (authorizing us to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the Act, including regarding the movement of traffic and the receipt of moneys, and to obtain access to such records).

<sup>235</sup> 47 U.S.C. § 218 (directing the Commission to "keep itself informed . . . as to technical developments and improvements in wire and radio communication and radio transmission of energy" and to obtain from "carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created").

<sup>236</sup> *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873, 3877, ¶ 6 (1995) (*Foreign Carrier Entry Order*) (stating that the "Commission's goals in regulating the U.S.- international marketplace have been (1) to promote effective competition in the global market for communications services; (2) to prevent anticompetitive conduct in the provision of international services or facilities; and, (3) to encourage foreign governments to open their communications markets").

ability to perform that function, as well as our other international telecommunications responsibilities, depends upon our having adequate information about those markets.<sup>237</sup> We seek comment whether we can obtain an accurate view of the total market for international voice traffic without getting data about the international traffic generated through interconnected VoIP. We also seek comment whether our continued ability to exercise our statutory obligations under the Communications Act, including sections 201 and 202, is affected by our ability to require interconnected VoIP service providers to comply with certain of our Part 43 reporting rules. We seek comment whether the Commission has ancillary authority under these sections of the Communications Act<sup>238</sup> to have interconnected VoIP providers report their traffic and revenue data for their international voice services.

123. In addition to the provisions cited above, the Commission may have authority ancillary pursuant to other statutory mandates. For example, section 4(k) of the Act requires us to prepare an annual report to Congress containing “such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of . . . communication” and “specific recommendations to Congress as to additional legislation.”<sup>239</sup> In its 2010 opinion in *Comcast Corp. v. FCC*, the D.C. Circuit “readily accept[ed]” that “certain assertions of Commission authority could be ‘reasonably ancillary’ to the Commission’s statutory responsibility to issue a report to Congress. For example, we might impose disclosure requirements on regulated entities in order to gather data needed for such a report.”<sup>240</sup> Traffic and data information for international voice calls carried by interconnected VoIP providers is necessary to determine the actual amount of international calling and the rates paid by consumers for international calling, information that we have traditionally reported to Congress.<sup>241</sup> Section 706 of the Telecommunications Act of 1996,<sup>242</sup> requires us to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.” We seek comment whether section 706 requires us to collect information about interconnected VoIP calling; as a measure of how much international traffic is shifting to broadband networks, or as a measure of how much the demand for interconnected VoIP services is encouraging the deployment of broadband. We seek comment whether sections 4(k) or 706 or some other provision of the Communications Act provides a basis for ancillary authority to have interconnected VoIP providers report their international voice traffic.

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<sup>237</sup> 2000 Biennial Regulatory Review – Amendment of Part 43 and 63 of the Commission’s Rules, IB Docket No. 00-231, Report and Order, 17 FCC Rcd 11416, 11428, ¶ 28 (2002) (explaining that the Commission, as well as industry, uses the information collected in the reports to monitor the development and competitiveness of international telecommunications markets and compliance with the Commission’s rules and policies, and to identify trends in communications services, monitor the balance of settlement payments, and develop Commission policies and positions on international telecommunications issues), *aff’d sub nom. Cellco P’ship d/b/a Verizon Wireless v. FCC*, 357 F.3d 88 (D.C. Cir. 2004).

<sup>238</sup> 47 C.F.R. §§ 151, 152, 201, 202, 211, 219, 220.

<sup>239</sup> Section 4(k) of the Act states in pertinent part: “The Commission shall make an annual report to Congress, copies of which shall be distributed as are other reports transmitted to Congress. Such reports shall contain – (1) such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of interstate and foreign wire and radio communications and radio transmission of energy” and “(4) specific recommendations to Congress as to additional legislation which the Commission deems necessary or desirable.” 47 U.S.C. § 154(k).

<sup>240</sup> 600 F.3d 642, 659 (D.C. Cir. 2010).

<sup>241</sup> See, e.g. *FCC, Fiscal Year 2009 Annual Performance Report at 13*; *FCC, Fiscal 2008 Performance and Accountability Report at 13*. The FCC annual reports are available at <http://www.fcc.gov/omd/strategicplan/>.

<sup>242</sup> 47 U.S.C. § 1302.

124. In addition, we seek comment whether our statutory responsibilities beyond those entailed in the Communications Act require us to have information about the growth of international telecommunications traffic and use of international transmission capacity. Fiber optic submarine cables transmit the bulk of international common carrier traffic to and from the United States.<sup>243</sup> Increasingly, a major use of such cables is the provision of international transport on which interconnected VoIP between the United States and a foreign point relies.<sup>244</sup> The growing trend toward interconnected VoIP and Internet-based services has been an important factor driving the need for construction of fiber optic submarine cables around the world. We license companies to own and operate submarine cables and associated cable landing stations located in the United States, and authorizes modifications, and transfers or assignments of existing cable landing licenses. Our review of applications seeks to ensure fulfillment of the requirements of the Cable Landing License Act of 1921.<sup>245</sup> This review includes ensuring effective competition and availability of submarine cable facilities to service providers and users. For example, where an applicant controls one of the necessary inputs of a submarine cable system (the wet link, cable landing station, or backhaul facilities), it cannot engage in anti-competitive conduct to the detriment of competing communications providers.<sup>246</sup> The Cable Landing License Act provides for the withholding of licenses to ensure landing rights in other countries, or to promote U.S. security or ensure just and reasonable rates and service in their operation.<sup>247</sup> The provisions of the Cable Landing License Act are separate and apart from the Communications Act and do not distinguish between common carriage and non-common carriage of services over licensed cables. Of the currently licensed 58 submarine cables, 42 have landing points in other countries. Of those 42 international subcables, 11 are “common carrier” cables also authorized under section 214 of the Communications Act, while 31 are non-common carrier cables licensed only under the Cable Landing License Act. The trend has been toward applications proposing non-common carrier cables which account for a substantial amount of the international bandwidth from the United States.<sup>248</sup> We seek comment whether information regarding traditional common carriage or non-common carriage, including interconnected VoIP, is necessary for us to make informed decision as to our policies and procedures developed to implement the requirements of the Cable Landing License Act. This includes, for example, the adequacy of protection for competition, and other matters. The actions that we take in licensing submarine cables impact the continuing availability

<sup>243</sup> In 2009, undersea cables accounted for 81.4% of the overall active transmission capacity used for international common carrier services; terrestrial links accounted for 18.5%; and satellite accounted for 0.1%. Of the traffic carried over those facilities, IMTS accounted for 6.5% of the total circuits used and international private line services accounted for 51.5% of total circuits. Approximately 42.0% of total circuits were used for services other than traditional private line services or data services. See International Bureau 2009 Section 43.82 Circuit-status Report, at [www.fcc.gov/ib/pd/pf/csmanual.html](http://www.fcc.gov/ib/pd/pf/csmanual.html).

<sup>244</sup> See notes 221 and 222, *supra*, citing worldwide estimates of international VoIP traffic growth.

<sup>245</sup> See Pub. Law No. 8 67<sup>th</sup> Congress, 42 Stat. 8 (1921); 47 U.S.C. §§ 34-39 (Cable Landing License Act of 1921); See also, Exec. Ord. No. 10530 § 5 (a) (May 10, 1954), reprinted as amended in 3 U.S.C. § 301, and 47 C.F.R. § 1.767-1.768. A cable landing license must be obtained prior to landing a submarine cable to connect: (1) the continental United State with any foreign country; (2) Alaska, Hawaii or the U.S. territories or possessions with a foreign country, the continental United States, or with each other and (3) points within the continental United States, Alaska Hawaii or a territory or possession in which the cable is laid within international waters.

<sup>246</sup> See 47 C.F.R. § 1.767(g). See also *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22178-86, ¶¶ 19-39 (2001) (*Subcable Licensing Order*).

<sup>247</sup> Pub. Law No. 8 § 2.

<sup>248</sup> Non-common-carrier cable capacity as a percentage of total cable capacity has increased from 28.7% in 1997 to 94.2% in 2009. See 2009 International Bureau Circuit Status Report, Table 7, page 33.

of adequate international transmission capacity for all types of services since submarine cables provide the bulk of U.S-international circuits.

125. In sum, we seek comment whether to have interconnected VoIP providers file international traffic and revenue data and whether we have ancillary authority under the Communications Act or Cable Landing License Act. We also seek comment whether we should require providers of VoIP service that may not conform to our definition of "interconnected VoIP" to report their international voice traffic and revenue data,<sup>249</sup> including any entities other than interconnected VoIP providers themselves, that may have access to the information needed to provide international traffic and revenue data for interconnected VoIP.

## 2. Owners of Non-Common Carrier International Circuits

126. We seek comment on whether non-common carrier international circuits should be reported as well as common carrier circuits. Currently, only common carriers are required to report their international circuits under section 43.82.<sup>250</sup> We sought comment in the NPRM on whether non-common carriers should report their international circuits.<sup>251</sup> The commenters opposed extending the reporting requirements to include non-common carrier circuits, questioning why we needed such information.<sup>252</sup> Since we originally sought comment on this issue in the NPRM, the international facilities market has continued to evolve, we have changed our rules regarding regulatory fees for submarine cable operators,<sup>253</sup> and we have made changes to the proposed reporting requirements for international circuits.<sup>254</sup> Accordingly, we seek further comment on extending streamlined reporting requirements to international non-common carrier circuits.<sup>255</sup>

127. As we noted in the NPRM, at the time that the reporting requirement was adopted, most circuits were provided by common carriers and almost all submarine cables were common carrier facilities.<sup>256</sup> Increasingly, however, many of the facilities that are used for providing international services – submarine cable, satellite, and terrestrial – are operated on a non-common carrier basis.<sup>257</sup> We

<sup>249</sup> Examples of VoIP services that are not within our definition of "interconnected VoIP" include "one-way" VoIP services (*i.e.*, services that enable users to terminate calls to the PSTN but do not permit users to receive calls that originate on the PSTN, or enable users to receive calls from the PSTN but do not permit the user to make calls terminating to the PSTN) and "IP-based voice services that do not require a broadband connection." *VoIP 911 Order and VoIP 911 NPRM*, 20 FCC Rcd at 10277, ¶ 58 (requiring interconnected VoIP service providers to supply 911 emergency calling capabilities).

<sup>250</sup> 47 C.F.R. § 43.82(a).

<sup>251</sup> NPRM, 19 FCC Rcd at 6483, ¶ 60.

<sup>252</sup> *See, e.g.*, SES Americom/PanAmSat Comments; Tyco Reply Comments; Letter from Adam Kupetsky, Level 3, to Marlene H. Dortch, FCC, dated April 27, 2006.

<sup>253</sup> *See Subcable Reg Fee Order*, 24 FCC Rcd 4208.

<sup>254</sup> *See* Section IV.B.3, paras. 110-14, *supra*.

<sup>255</sup> We recognize that common carriers may also have international circuits that are made available on a non-common carrier basis. Under our proposal those circuits should also be reported.

<sup>256</sup> NPRM, 19 FCC Rcd at 6483, ¶ 60.

<sup>257</sup> Cable landing licensees and satellite licensees may request authority to provide service on either a common carrier or non-common carrier basis. *See* 47 C.F.R. §§ 1.767(a)(6), 25.114(c)(14). Certain wireless service, such as microwave services that are used for international transmissions, may be provided on a common carrier or non-common carrier basis. *See, e.g.* 101 C.F.R. §§ 603, 703, 101.1411(a); 101.1511(a).

have stated in the past that common carriers may purchase circuits in non-common-carrier facilities for use in providing their IMTS and other common carrier services and that, in such cases, the circuits become common carrier facilities.<sup>258</sup> Still, there is substantial capacity in non-common-carrier submarine cables that is idle and available for use by common carriers, non-common carriers, and end users.

128. The current reporting requirements, however, do not require that these circuits be reported. Thus, the current rule makes a distinction based on regulatory classification even though the facilities are generally fungible and are often provided from the same platform (submarine cable, terrestrial or satellite facility).<sup>259</sup> We seek comment on whether the current rule puts us in the position of effectively treating substantially similar platforms differently and, if so, whether such different treatment is justified.

129. We currently do not have information on circuits operated on a non-common carrier basis and their potential effect on the availability of circuits for common-carrier services or other services, such as Internet backbone services. We are concerned that the view of the U.S. telecommunications industry afforded by the circuit status report is becoming skewed by the lack of information on such operators. For example, only about 10 percent of the capacity of submarine cables is used for common carriage and thus reported in the circuit status reports.<sup>260</sup> Industry estimates of the number of circuits in use on U.S.-licensed submarine cables is five to eight times greater than that currently reported in the circuit-status reports.<sup>261</sup> This information may be important for accurately assessing the market in analyzing proposed transactions, since we currently only receive information on part of the potential capacity in a market. In past transaction proceedings, we have had to rely on *ad hoc* inquiries to administrators of various undersea cable systems to determine circuit capacity and ownership information needed to estimate market shares and analyze competition. Because of the complexity of circuit ownership arrangements and the *ad hoc* nature of our request, we have been concerned about the reliability of the information that we have received. This has also been an issue in assessing the availability of international capacity in the event of natural disasters, such as the recent earthquake and tsunami in Japan. Requiring reporting of cable capacity ownership subject to uniform definitions by the Commission on an annual basis would guarantee the future accuracy of the information.

130. We seek comment whether our statutory obligations under the Cable Landing License Act require us to gather information about the use of international non-common carrier circuits. As we discussed above,<sup>262</sup> we license companies to own and operate submarine cables and associated cable

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<sup>258</sup> See, e.g., *Tel-Optik Limited*, 100 FCC 2d 1033 (1985); *Establishment of Satellite Systems Providing International Communications*, 101 FCC 2d 1046 (1985), *on recon.*, 61 R.R. 2d 649 (1986), *further recon.* 1 Rcd 439 (1986); *Pan American Satellite Corporation*, 101 FCC 2d 1318 (1985); *Pan American Satellite Corporation*, 101 FCC 2d 1318 (1985).

<sup>259</sup> See *Assessment and Collection of Regulatory Fees for 1997*, MD Docket No. 96-186, Report and Order, 12 FCC Rcd 17161, 17187, ¶ 68 (1997) (international bearer circuits provided by non-common carriers are technically identical to bearer circuits provided by common carriers).

<sup>260</sup> 2009 Section 43.82 Circuit Status Data (rel. Dec. 2010), Table 7-A.

<sup>261</sup> In 2008, *Pacific Crossing Limited and PC Landing Corp.* stated that industry data showed 5.5 times as many circuits on submarine cables in use than reported in the circuit status report. Comments in MD Docket No. 08-65 (filed May 30, 2008) at 8 (citing the 2006 Section 43.82 Circuit Status Data report and Telegeography data). For year end 2009 this ratio had increased to 7.6. See 2009 Section 43.82 Circuit Status Data, Table 2; Telegeography data.

<sup>262</sup> See para. 123, *supra*.

landing stations located in the United States, and authorize modifications, and transfers or assignments of existing cable landing licenses. Our review of applications seeks to ensure fulfillment of the requirements of the Cable Landing License Act, including assuring effective competition and availability of submarine cable facilities to service providers and users. The provisions of the Cable Landing License Act do not distinguish between common carriage and non-common carriage of services over licensed cables. As we have noted,<sup>263</sup> most submarine cables are non-common carrier cables as the trend has been toward applications proposing non-common carrier. We seek comment on whether information regarding traditional common carriage or non-common carriage, including interconnected VoIP, is necessary for us to make informed decision as to our policies and procedures developed to implement the requirements of the Cable Landing License Act. This includes, for example, the adequacy of protection for competition. The actions that we take in licensing submarine cables will have an impact on the continuing availability of adequate international transmission capacity for all types of services.

131. Further, we seek comment on whether we have authority under the Communications Act to require the reporting of international non-common carrier circuits. Although operators of non-common carrier cable, satellite, and terrestrial facilities are not subject to regulation under Title II of the Communications Act,<sup>264</sup> we retain ancillary jurisdiction over such entities. The Court of Appeals has adopted a two-part test for determining whether the Commission can exercise ancillary jurisdiction: “(1) the Commission’s general jurisdictional grant under Title I [of the Communications Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.”<sup>265</sup> Services offered over non-common carrier cable, satellite, and terrestrial facilities fall within the Commission’s jurisdiction as defined in Section 2 of the Act.<sup>266</sup> In addition, non-common carrier services provided over such facilities are reasonably ancillary to common carriers services provided over such facilities, because non-common carrier submarine cable and satellite providers have become an important part of the U.S. international telecommunications industry, and increasingly provide services that are essentially the same as those offered by common carriers.<sup>267</sup> As a result, we do not believe that we can achieve a comprehensive view of the international telecommunications network unless all such entities, including non-common carrier cable and satellite providers, file the annual circuit status report for the circuits they offer directly to users. We seek comment on this proposal.

#### D. Confidentiality

132. In the NPRM, we stated that we generally treated traffic and revenue information submitted under section 43.61 as non-confidential except for specific pieces of information such as transit information.<sup>268</sup> We also noted that we have accorded confidentiality to circuit-status information filed

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<sup>263</sup> *Id.*

<sup>264</sup> See, e.g., *Tel-Optik Limited*, 100 FCC 2d 1033 (1985); *Establishment of Satellite Systems Providing International Communications*, 101 FCC 2d 1046 (1985), *recon.*, 61 R.R. 2d 649 (1986), *further recon.* 1 Rcd 439 (1986); *Pan American Satellite Corporation*, 101 FCC 2d 1318 (1985).

<sup>265</sup> *Comcast*, 600 F.3d at 646, quoting *American Library Ass’n v. FCC*, 406 F.3d at 691-92.

<sup>266</sup> “The provisions of this act shall apply to all interstate and foreign communications by wire or radio . . .” Section 2(a) of the Communications Act, 47 U.S.C. § 152(a).

<sup>267</sup> *Assessment and Collection of Regulatory Fees for 1997*, 12 FCC Rcd at 17188, ¶ 68.

<sup>268</sup> 19 FCC Rcd at 6485, ¶ 68.

under section 43.82.<sup>269</sup> We have, however, noted that we favor the free availability of information and proposed to continue to treat traffic and revenue data as generally available to the public.<sup>270</sup> We sought specific comment on including confidential traffic and data information in industry-wide totals in the international traffic and revenue data submitted by carriers.<sup>271</sup> As for circuit-status information, we sought comment on the more fundamental issue of why such data should be considered confidential, including seeking comment on public release of information after one or two years.<sup>272</sup> In requesting comment on these issues, we recognized that carriers may seek confidential treatment for information submitted under section 0.459 of the rules.<sup>273</sup>

133. Four parties commented on the issue of confidential treatment of data.<sup>274</sup> The comments were general in nature, asserting the need for broad protection for data submitted to the Commission as proprietary and, therefore, not available for public inspection. The assertions were generally conclusory, with little discussion of why the data submitted to us should be treated as proprietary. With respect to circuit-status reports, none of the comments addressed the issue whether data could be released after two years.

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<sup>269</sup> The exception to our general policy of public availability of Section 43.61 traffic and revenue data are six “proprietary” billing codes the Common-carrier Bureau (now the Wireline Competition Bureau) created in its 1995 revision of the Section 43.61 Filing Manual the carriers to use in reporting certain types of traffic (“country-beyond,” “country-direct,” and the originating leg of foreign traffic reoriginated through the United States), as well as route-specific minutes for transiting traffic. *See Manual for Filing International Traffic Statistics Pursuant to Section 43.61 of the Commission’s Rules*, Order, DA 95-1248, 10 FCC Rcd 13418, 13421, ¶¶ 12-15 (1995). *See also Section 43.61 Filing Manual*, Section 1-E, Billing Codes, Switched and Miscellaneous or Other Services, at 15; Clarification of Section 43.61 International Traffic Data Reporting Requirements, Public Notice, DA 98-1369 (rel. July 9, 1998), Table of Billing Codes; Annual Section 43.61(a) International Telecommunications Traffic Reports Due August 2, 2010, Public Notice, DA 10-1247 (rel. July 2, 2010), Attachment 1, Table of Billing Codes. We treat the information filed under those billing codes as proprietary information that we do not routinely make available for public inspection. 10 FCC Rcd at 13421, ¶ 12. The *Section 43.61 Filing Manual* allows carriers to file an additional “public” report in which they recombine the information reported under the proprietary billing codes into the total IMTS traffic figure they report for each foreign point, thereby making it impossible to differentiate such traffic from other traffic. Section 43.61 Filing Manual at 15, 35. *See also* Public Notice, DA 10-1247 at 3 and Attachment 1, Table of Billing Codes.

<sup>270</sup> 19 FCC Rcd at 6485, ¶ 68.

<sup>271</sup> *Id.*

<sup>272</sup> *Id.* at ¶ 71.

<sup>273</sup> 47 C.F.R. 0.459. Section 0.459 permits carriers to submit a substantiated request for confidential treatment of their international traffic and revenue data. It provides that we may either act upon such requests for confidential treatment at the time they are submitted to us or defer action upon them and withhold the information from public inspection until someone files a request for inspection pursuant to Section 0.460 or Section 0.461 of the rules. We will not, on review, consider unsupported requests for confidentiality that do not comply with Section 0.459. Rather, we will grant a request for confidentiality only where the entity submitting the information presents, by a preponderance of evidence, a case for non-disclosure, 47 C.F.R. 0.459(d)(2).

<sup>274</sup> AT&T Comments at 13 (limited to circuit-status report), AT&T Reply Comments at 7-8 (circuit-status data), AT&T Dec. 1, 2005 *Ex Parte*, Attachment at 2 (circuit-status data), MCI Comments at 10 (traffic and revenue report and circuit-status report), MCI Reply at 4; Sprint Comments at 3 (argues for elimination of quarterly reports because their confidentiality makes them of limited use); Verizon Comments at 7-8 (traffic and revenue and circuit-status reports), Verizon Feb. 9, 2005 *Ex Parte*, Attachment at 3 (circuit-status data).

134. Since the 2004 release of the NPRM in this proceeding, requests for confidential treatment of data annually submitted to us have risen from 33 in 2004 to 97 in 2010<sup>275</sup> with respect to section 43.61 traffic and revenue reports, and from 11 in 2004 to 22 in 2010 with respect to circuit-status reports.<sup>276</sup> The requests have been submitted pursuant to section 0.459 of the rules. The requests for confidential treatment claim that all data, not merely particular data elements, are proprietary and should not be made publicly available. Moreover, the justifications for confidentiality ranged from the perfunctory and conclusory to fuller explanations, as required under section 0.459.<sup>277</sup> The International Bureau, in 2010, acted upon one FOIA request for section 43.61 traffic and revenue data, and found that the justifications made by the carriers for confidential treatment were inadequate. Accordingly, the International Bureau denied confidential treatment and granted inspection of the data requested, subject to the carriers' request for review of the Bureau's decisions by the Commission.<sup>278</sup> An application for review of the Bureau action is pending Commission action.<sup>279</sup>

135. We continue to believe that the public interest is served by maintaining availability to the public of information filed with us subject to protections afforded by law. We recognize that there is international traffic and revenue and circuit-status information that appropriately should be treated as confidential. However it does not appear that all such information filed with the Commission should be given blanket treatment as confidential and made unavailable for public inspection. On a going-forward basis, we seek to determine in this proceeding what information should be identified as "not routinely available to the public under our rules."<sup>280</sup> We seek to avoid the "exception becoming the rule" under the provisions of section 0.459 (where requests for confidentiality extend beyond specific data items to include all filed information), a trend which appears to be developing in filings made in recent years.

136. **Traffic and revenue information.** We propose to identify traffic and revenue

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<sup>275</sup> See 2004 International Telecommunications Data Report, Table 5.

<sup>276</sup> See 2003 Section 43.82 Circuit Status Data report, Table 1; 2009 Section 43.82 Circuit Status Data report, Table 1.

<sup>277</sup> 47 C.F.R. § 0.459 (b) requires a person seeking confidential treatment for information to identify the specific information for which confidential treatment is sought and the Commission proceeding in which the information was submitted. The section also requires parties to explain: (1) whether the information is commercial, financial, contains a trade secret, or is privileged; (2) whether the service to which the information is related is subject to competition; (3) how disclosure could cause substantial competitive harm; (4) what measures the party has taken to prevent unauthorized disclosure; (5) whether the information has ever been made public or revealed to a third party; (6) the justification of the period during which the submitting party asserts the information should not be publicly available; and any other information the submitting party believes would be useful in assessing whether its request should be granted.

<sup>278</sup> See Letter from Mindel De La Torre, Chief, International Bureau, to Douglas Orvis II, Counsel for IDT Telecom, Inc. (IDT), FOIA Control No. 2010-306 (dated April 30, 2010), denying confidential treatment for IDT's 2006-8 Section 43.61 traffic and revenue reports.

<sup>279</sup> See Letter from Douglas Orvis II, Counsel for IDT Telecom, Inc., to Marlene H. Dortch, Secretary, FCC (dated May 14, 2010).

<sup>280</sup> Section 0.451 of our rules governing disclosure of information distinguishes between records that are "routinely available" for public inspection and those that are not. 47 C.F.R. § 0.451(a) (records routinely available for public inspection) and 0.451(b) (records not routinely available for public inspection). The carriers' Section 43.61 traffic and revenue reports are not listed in Section 0.453 and 0.455, which identify records that are routinely available for public inspection, or in Section 0.457, which identified records that are not routinely available for public inspection, 47 C.F.R. §§ 0.453, 0.455 and 0.457.

information filed with the Commission that would be treated as not routinely available to the public. We would consider other information to be routinely available for public inspection subject to our rules.<sup>281</sup> Our approach is to distinguish aggregated and disaggregated information filed on an international route. An expressed concern about making traffic and revenue data public has been that the data contains route-specific traffic and cost information that would allow competitors to determine the filing carrier's cost of providing service or the rates, terms or conditions of the carrier's interconnection agreements with foreign correspondents. However, where data is highly aggregated, rate, cost, and other information from interconnection agreements on a particular route are not specified. Aggregated data typically includes data for different types of traffic settled under a variety of termination arrangements. Carriers may deal with two or more correspondents on a given route. Carriers typically terminate traffic using a variety of methods, each with its own cost characteristics – *e.g.*, traditional interconnection with a foreign carrier in the destination country; reorigination through intermediary carriers; or interconnection at “spot markets,” *i.e.*, exchanges where carriers can buy or sell call completion services anonymously. Carriers may pay different settlement rates for different types of traffic, *e.g.*, collect calls, operator-assisted calls, and direct-dialed calls. Under our FNPRM proposals, data for all correspondents, termination arrangements, and traffic types would be aggregated and could not be separately distinguished. Because of the aggregated nature of the data, it does not appear that one could identify the specific commercial terms for any particular correspondent, termination arrangement, or traffic type. Nor could one form a clear picture of the rates, costs, or minutes associated with particular correspondents, traffic types, or methods of termination.

137. We currently deem certain disaggregated information about traffic subject to certain billing codes to be commercially sensitive and treat such data as not routinely available to the public. Additionally, we currently treat data for route-specific transiting minutes as proprietary. In the NPRM, we noted a staff recommendation to eliminate disaggregate reporting of such calling arrangements.<sup>282</sup> We today propose in this FNPRM to eliminate the disaggregate reporting of traffic by billing codes. We would thereby eliminate the basis for treating such data as not routinely available to the public as reflected in our current policy. Specifically, under our proposal, carriers would no longer file the disaggregated information they now file by billing code. Moreover, under our proposal, carriers would no longer file transiting minutes on a disaggregated, route-specific basis, but rather as world-total data. As a result, filing entities should be able to make this aggregated information routinely available for public inspection.

138. We note, however, that we also are proposing in this FNPRM revisions to the annual traffic and revenue reporting requirement that would seek some information that the carriers do not now report in their Section 43.61 reports. For example, we are proposing to require service providers to disaggregate the traffic they terminate on foreign fixed-line networks from the traffic they terminate on foreign mobile networks. Such disaggregated reporting could raise competitive concerns for carriers. We believe that we can accommodate such concerns in the same way we now treat disaggregated information in the current traffic and revenue report – we could adopt a proprietary schedule on which carriers report separately the traffic they terminate on foreign fixed-line and mobile networks. We would keep such information confidential and allow filing entities to file a separate schedule in which they would aggregate the two methods of termination and thereby prevent competitors from deriving any specific cost information. Service providers would file this aggregated schedule in a separate, “public” version of their traffic and revenue reports that we could then make routinely available to the public. This approach

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<sup>281</sup> See 47 C.F.R. 0.457-0.462.

<sup>282</sup> See NPRM, Appendix C, 19 FCC Rcd at 6512, ¶¶ 25-26.

would be similar to our treatment of the current proprietary billing codes and would, we believe, balance the interests of service providers in keeping competitively sensitive information confidential with the public interest in having access to information provided to the Commission.

139. There may be other information that should be considered as disaggregated, and not routinely be made available for public inspection. For example, this FNPRM seeks comment whether to require service providers to disaggregate their data by customer category and routing arrangement.<sup>283</sup> Parties should address in their comments whether this information or any other type of information that we propose that they provide should be considered disaggregated and treated as not routinely available for public inspection. Parties should explain the basis for confidential treatment under the standards of section 0.459(a)(1), with sufficient specificity to explain how public release of the information would be competitively harmful. They should be mindful that justifying confidential treatment for particular pieces of information in the reports does not justify keeping the whole report confidential. Our rules provide for reports to be made publicly available in a redacted form, with just the sensitive information withheld. Parties should address how the passage of time may make sensitive information non-sensitive. Specifically, we request comment whether such information could be released after two years, without causing competitive harm.

140. Finally, notwithstanding determinations in this rulemaking, carriers will continue to have the procedural option of requesting confidential treatment of data filed in the future under section 0.459(1) of our rules. In such cases, we will direct the International Bureau to act separately on each such request rather than withhold public inspection pending FOIA request under section 0.459(d)(3) of the rules.

141. Accordingly, we propose to provide in section 0.457 of the rules that disaggregated revenue, traffic and payout data information would not be routinely available for public inspection. As further guidance for the public, we would instruct the International Bureau to include in its Section 43.62 Filing Manual detailed examples of records that would be so treated. Should we decide in the future to revise section 0.457 so that additional types of records are to be treated as not routinely available for public inspection, the International Bureau would update the Filing Manual accordingly. Pursuant to our rules, any request for inspection of data deemed as not routinely available for public inspection would be entertained only under section 0.461. We seek comment on this proposal.

142. **Revised Circuit-Status Report.** The NPRM also sought carrier comment whether the circuit-status information the carriers submit under section 43.82 continues to be competitively sensitive or whether the carriers' circuit-status information could also be made available to the public. The NPRM directed carriers that want continued confidential treatment for this information to address why the information is competitively sensitive. It noted that it is possible that information that is competitively sensitive when it is submitted would not continue to be sensitive after time has passed. The NPRM directed the carriers to comment, should they believe that such information is sensitive, whether the circuit-status information could be released after one year or two years. As noted above, none of the parties commented on these issues beyond conclusory assertions that the Commission should continue to allow carriers to claim confidentiality for their data. None addressed the issue whether data could be released after one or two years. We are proposing revisions to the information that was reported under the Section 43.82 Report. We therefore ask parties to comment whether the new, simplified circuit-status report that we propose in this FNPRM contains competitively sensitive information and whether they believe there will be a need for the information to be kept confidential. As with the traffic and revenue

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<sup>283</sup> See Section IV.B.2.f, paras. 77-83, *supra*.

information, we propose to identify the circuit information that should continue to be treated as not routinely available.

## V. TRANSITION

143. In the First Report and Order we have eliminated a number of reporting requirements.<sup>284</sup> We direct the International Bureau to issue a Public Notice announcing when these changes take effect. We also direct the Bureau to issue a Public Notice notifying the carriers of the changes in what they need to file in light of these changes in the reporting requirements, in particular the elimination of the circuit addition report and the requirement to report separately for off-shore U.S. points. Carriers should continue to file their reports pursuant to the current Section 43.61 Filing Manual and Section 43.82 Filing Manual, as amended by the Public Notice, until this proceeding is complete and a new Filing Manual has been issued.

## VI. ADMINISTRATIVE MATTERS

### A. *Ex Parte* Presentations

144. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>285</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.<sup>286</sup> Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) of our rules as well.

### B. Final Regulatory Flexibility Analysis for Report and Order

145. Pursuant to the Regulatory Flexibility Act,<sup>287</sup> we have prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities by the policies and actions taken in the First Report and Order. The text of the FRFA is set forth in Appendix A. Written public comments are requested on this FRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Further Notice of Proposed Rulemaking, and they should have a separate and distinct heading designating them as responses to the FRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this First Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.<sup>288</sup>

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<sup>284</sup> See Section III, paras. 18-27, 50-54, *supra*.

<sup>285</sup> 47 C.F.R. §§ 1.1200, 1.1206; *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, GC Docket No. 95-21, Report and Order, 12 FCC Rcd 7348 (1997).

<sup>286</sup> 47 C.F.R. § 1.1206(b)(2).

<sup>287</sup> See 5 U.S.C. § 603. The RFA, *see* U.S.C. §601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>288</sup> 5 U.S.C. § 603(a).