



PUBLIC NOTICE

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

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
TTY: 1-888-835-5322

DA 20-671
June 25, 2020

NOTICE OF INTENT TO SHARE INTERNATIONAL CIRCUIT CAPACITY DATA FROM 2018 TO 2019 WITH THE DEPARTMENT OF HOMELAND SECURITY AND OTHER FEDERAL AGENCIES

IB Docket No. 20-194

Comment Date: July 6, 2020

The Commission collects annual circuit capacity data for U.S.-international submarine cable systems pursuant to section 43.82 of the Commission's rules.¹ On February 19, 2019, the International Bureau provided notice that it planned to share the 2015-2017 circuit capacity data with the Department of Homeland Security (DHS).² On March 4, 2020, the Department of Homeland Security (DHS) requested the circuit capacity data from 2015 to 2019.³ By this public notice, the International Bureau announces our intent to also share the international circuit capacity data with DHS and other federal agencies for the 2018 to 2019 reporting periods, including data for which confidential treatment has been requested,⁴ based on the generally applicable procedures set out below. This notice initiates a pleading cycle that would allow any entity that provided circuit capacity data from 2018 to 2019 to oppose such disclosure of its data to DHS and other federal agencies.

DHS states that the information contained in the Circuit Capacity Reports is "critical to DHS's national security functions, including homeland security."⁵ DHS states that "[t]his information, when combined with other data sources, will be used to protect and preserve national security and for the Department's emergency response purposes."⁶ DHS adds that the data will "enhance its efforts and inform its analysis and decision-making that protect the resilience of the Nation's critical infrastructure."⁷

The Commission receives two types of annual circuit capacity data regarding international submarine cables: (1) submarine cable licensees must file capacity information for each cable system

¹ 47 CFR § 43.82.

² Notice of Intent to Share International Circuit Capacity Data from 2015 to 2017 With Federal Agencies, IB Docket No. 19-32, Public Notice, 34 FC Rcd 561 (IB 2019).

³ Letter from Bryan S. Ware, Assistant Director, Cybersecurity Division, Cybersecurity and Infrastructure Security Agency, DHS, and Scott Glabe, Assistant Secretary for Trade and Economic Security Office of Strategy, Policy, and Plans, DHS, to Denise Coca, Chief, Telecommunications and Analysis Division, International Bureau, FCC (dated March 5, 2020) (DHS Letter).

⁴ See 47 CFR § 0.442(a).

⁵ DHS Letter at 1.

⁶ *Id.*

⁷ *Id.*

(i.e., available capacity) as of December 31st of the current reporting period and two years from the current reporting period (i.e., planned capacity) and (2) submarine cable landing licensees and common carriers that owned or leased capacity on a submarine cable between the United States and any foreign point must file capacity information as of December 31st of the current reporting period.⁸ The Commission allows reporting entities to request confidential treatment of their data under section 0.459(a)(4) of the Commission's rules by checking a box in the Registration Form.⁹ The annual aggregated data from the reports are released to the public.¹⁰

Although the Commission's regulations provide that proprietary and commercially sensitive information will be withheld from public disclosure, subject to the public's right to seek disclosure under the Freedom of Information Act and implementing regulations,¹¹ the Commission may disclose to other Federal agencies records that have been submitted to the Commission in confidence upon another agency's request or upon the Commission's own motion.¹² In general, under federal law, 44 U.S.C. § 3510, the Commission may share information it has collected with other Federal government agencies. Section 3510 further provides that all provisions of law that relate to the unlawful disclosure of information apply to the employees of the agency to which the information is released "in the same manner and to the same extent" as they do to employees of the collecting agency.¹³ In other words, if the Commission shares circuit capacity data with DHS or other national security agencies, those agencies are required to protect the confidentiality of information to the same extent as the Commission does. DHS states that it will treat the international circuit capacity data in accordance with the protections afforded under the Commission's rules regarding confidentiality protections (including 47 C.F.R §§ 0.442, 0.457, 0.459, and 0.461) and the Department's policies regarding confidentiality protections.¹⁴

Entities that provided the circuit capacity data for the 2018 and/or 2019 reporting periods with a request for confidential treatment have 10 days from the date of this notice to oppose disclosure to DHS and other national security agencies.¹⁵ If we receive no opposition, the International Bureau will disclose this circuit capacity information to DHS and other federal agencies. If disclosure is opposed and the Commission decides to make the data available, the procedures in section 0.442(d)(4) will apply.¹⁶

Pursuant to sections 1.415 and 1.419 of the Commission's rules, entities that provided the circuit capacity data for the 2018 and/or 2019 reporting periods with a request for confidential treatment may file objections to this planned disclosure of the 2018 and 2019 circuit capacity data by filing in IB Docket 20-

⁸ 47 CFR § 43.82(a).

⁹ 47 CFR § 43.82(b); *see Section 43.62 Reporting Requirements for U.S. Providers of International Services et al.*, 32 FCC Rcd 8115, 8132, para. 35.

¹⁰ *See FCC, Section 43.82 Circuit Capacity Data for U.S.-International Submarine Cables*, <https://www.fcc.gov/circuit-capacity-data-us-international-submarine-cables>.

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

¹² 47 CFR § 0.442(d).

¹³ 44 U.S.C. § 3510(b)(1).

¹⁴ DHS Letter at 1-3.

¹⁵ 47 CFR § 0.442(d)(1).

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

194 on or before July 6, 2020.¹⁷ Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020).

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

Parties should also send a courtesy copy of their filing to Circuit.Capacity@fcc.gov and Stacey Ashton, Telecommunications and Analysis Division, International Bureau, Federal Communications Commission, via e-mail to Stacey.Ashton@fcc.gov.

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁸ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has

¹⁷ 47 CFR §§ 1.415, 1.419.

¹⁸ 47 CFR §§ 1.1200 *et seq.*

made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Stacey Ashton, Telecommunications Analyst, Telecommunications and Analysis Division, International Bureau at Stacey.Ashton@fcc.gov or at (202) 418-2214 or David Krech, Associate Division Chief, Telecommunications and Analysis Division, International Bureau at David.Krech@fcc.gov or at (202) 418-7443.

- FCC -