



PUBLIC NOTICE

Federal Communications Commission
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January 7, 2022

NOTICE OF INTENT TO SHARE INTERNATIONAL CIRCUIT CAPACITY DATA WITH THE COMMITTEE FOR THE ASSESSMENT OF FOREIGN PARTICIPATION IN THE UNITED STATES TELECOMMUNICATIONS SERVICES SECTOR

IB Docket No. 21-439

Comment Date: January 18, 2022

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 July 19, 2021, the Department of Justice (DOJ), in its capacity as Chair of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee),² filed a letter requesting "access to international circuit capacity data submitted to the [Commission] for the 2015 to 2020 reporting periods, including data for which confidential treatment has been requested," which "will enhance and improve the Committee's ability to execute its national security and law enforcement missions."³ By this public notice, the International Bureau announces our intent to share with the Committee the international circuit capacity data for the 2015 to 2020 reporting periods, including data for which confidential treatment has been requested,⁴ based on the procedures set out below.⁵ This notice initiates a pleading cycle that allows

¹ 47 CFR § 43.82.

² The members of the Committee specifically designated by the Executive Order are the Secretary of Defense, the Secretary of Homeland Security, and the Attorney General, who serves as the Chair. Executive Order No. 13913 of April 4, 2020, Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, 85 Fed. Reg. 19643, 19643-44 § 3(b), (c) (Apr. 8, 2020) (Executive Order 13913). The advisors to the Committee specifically designated by the Executive Order are the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Office of Management and Budget, the United States Trade Representative, the Director of National Intelligence, the Administrator of General Services, the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Director of the Office of Science and Technology Policy, and the Chair of the Council of Economic Advisers. *Id.*, 85 Fed. Reg. at 19644 § 3(d).

³ Letter from David Plotinsky, Acting Chief, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Denise Coca, Chief, Telecommunications and Analysis Division, International Bureau, FCC at 1 (dated July 19, 2021) (DOJ Letter); *id.* at 2 (adding that "[u]nder Section 8 of [Executive Order] 13913, the Committee may seek information from any entity as needed in furtherance of its reviews of applications and licenses.").

⁴ 47 CFR § 0.442(a).

⁵ The International Bureau previously provided notice of its intent to share international circuit capacity data with the Department of Homeland Security and other federal agencies for the 2015 to 2019 reporting periods. *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, Public Notice, 35 FCC Rcd 6533 (IB 2020); *Notice of Intent to Share International Circuit Capacity Data from 2015 to 2017 with Federal Agencies*, IB Docket No. 19-32, Public Notice, 34 FCC Rcd 561 (IB 2019).

any entity that provided confidential circuit capacity data for the 2015 to 2020 reporting periods to oppose such disclosure of its data to the Committee.

DOJ states that under Executive Order 13913, the Committee's primary objective is "'to assist the FCC in its public interest review of national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector.'" ⁶ DOJ indicates that "the Committee regularly collects and analyzes relevant unclassified and classified information to gain a holistic understanding of the national security and law enforcement risks associated with granting such applications." ⁷ DOJ also states that "[a]mong the matters referred to it by the FCC, the Committee frequently reviews submarine cable landing license applications for national security and law enforcement concerns." ⁸ Finally, DOJ states that the circuit capacity data are "relevant to the Committee's national security and law enforcement reviews and will provide additional context to its risk based analyses." ⁹

The Commission receives two types of annual circuit capacity data reports regarding U.S.-international submarine cables. First, licensees of a submarine cable between the United States and any foreign point must file capacity information for each cable system as of December 31st of the current reporting period (i.e., available capacity) and two years from the current reporting period (i.e., planned capacity). ¹⁰ Second, 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. ¹¹ The Commission allows reporting entities to request confidential treatment of their data under section 0.459(a)(4) of the Commission's rules. ¹² The annual aggregated data from the reports are released to the public. ¹³

The Commission's regulations provide that confidential 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. ¹⁴ 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. ¹⁵ In general, under federal law, 44 U.S.C. § 3510, the Commission may share information it has collected with other Federal government agencies and, if it does, 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 "to the same extent and in the same manner" as they do to employees of the collecting agency. ¹⁶

⁶ DOJ Letter at 1 (quoting Executive Order 13913, 85 Fed. Reg. at 19643 § 3(a)).

⁷ *Id.* at 2.

⁸ *Id.* at 1.

⁹ *Id.* at 2.

¹⁰ 47 CFR § 43.82(a).

¹¹ *Id.*

¹² 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.

¹³ *See* FCC, *Circuit Capacity Data for U.S.-International Submarine Cables*, <https://www.fcc.gov/circuit-capacity-data-us-international-submarine-cables>.

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

¹⁵ 47 CFR § 0.442(d).

¹⁶ 44 U.S.C. § 3510(b)(1).

DOJ states that the circuit capacity data will be treated in accordance with the Commission's rules regarding confidentiality protections, including sections 0.442, 0.457, 0.459, and 0.461, as well as the confidentiality provisions contained in Section 8 of Executive Order 13913.¹⁷ DOJ also states that "[s]hould a third party request such information pursuant to the Freedom of Information Act, absent court order or other applicable overriding legal authority to the contrary, [DOJ] will withhold the information pursuant to the procedures promulgated in 28 C.F.R. §§ 16.1 *et seq.*"¹⁸

Any entity that provided the circuit capacity data for the 2015 to 2020 reporting periods with a request for confidential treatment will have ten (10) days from the date of this public notice to oppose disclosure to the Committee.¹⁹ If disclosure is opposed and the Commission decides to make the circuit capacity data available, the procedures in section 0.442(d)(4) will apply.²⁰ If we receive no opposition, the International Bureau will disclose this circuit capacity information to the Committee. The Committee will be subject to the requirements of 44 U.S.C. section 3510 and the confidentiality protections contained in the Commission's regulations and Section 8 of Executive Order 13913.²¹ For purposes of this Public Notice, the Committee includes the members and advisors specifically identified in Executive Order 13913.²² If the Committee seeks to share the circuit capacity data with a newly identified executive department or agency, or Assistant to the President, the Committee must file a separate request for access to circuit capacity data.²³

Pursuant to sections 1.415 and 1.419 of the Commission's rules, entities that submitted circuit capacity data for the 2015 to 2020 reporting periods with a request for confidential treatment may file objections to this planned disclosure of such circuit capacity data by filing in IB Docket 21-439 on or before January 18, 2022.²⁴ 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.
 - 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.

¹⁷ DOJ Letter at 2.

¹⁸ *Id.*

¹⁹ 47 CFR § 0.442(d)(1).

²⁰ 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.").

²¹ 44 U.S.C. § 3510; 47 CFR § 0.441 *et seq.*; Executive Order 13913, 85 Fed. Reg. at 19646 § 8.

²² *See supra* note 2.

²³ Executive Order 13913, 85 Fed. Reg. at 19643-44 § 3(b), (d).

²⁴ 47 CFR §§ 1.415, 1.419.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, 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); <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

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Parties should also send a courtesy copy of their filing to Stacey Ashton, Telecommunications Analyst, Telecommunications and Analysis Division, International Bureau at 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.²⁵ 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 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.

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²⁵ 47 CFR §§ 1.1200 *et seq.*