Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Reporting Requirements for U.S. Providers of International Telecommunications Services	)	IB Docket No. 04-112
	)	
Amendment of Part 43 of the Commission's Rules	)	

FIRST REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: May 12, 2011 **Released: May 13, 2011**

Comment Date: (30 days after publication in the Federal Register)
Reply Comment Date: (45 days after publication in the Federal Register)

By the Commission: Chairman Genachowski and Commissioners Copps, McDowell, and Clyburn issuing separate statements; Commissioner Baker not participating.

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I. INTRODUCTION

1. In this Order and Further Notice of Proposed Rulemaking we eliminate outdated and unnecessary reporting requirements related to international telecommunications traffic for which the burdens on U.S. international service providers now outweigh the benefits.[1] We also seek comment on additional reforms to further streamline and modernize reporting requirements in this area, in order to ensure that the Commission is collecting the data it needs, and only the data it needs, to carry out its statutory responsibilities. These reforms are part of the Commission's Data Innovation Initiative, launched last year to ensure that our data collections match our data needs while avoiding unnecessary or excessive burdens on entities subject to Commission authority.[2] As part of the Data Innovation Initiative, staff throughout the Commission are identifying data collections that should be eliminated, streamlined, or otherwise modernized.

2. In order to carry out our statutory duties to protect the interests of U.S. consumers—especially those who use international services—and U.S. international service providers, and to monitor and facilitate healthy competition in international markets, we have long collected international traffic and revenue data on all routes between the United States and foreign points. This data is also used by other government agencies, such as the Department of Justice and the United States Trade Representative, as well as others including international organizations, researchers, and other interested members of the public. This is the first review of our international traffic and revenue and circuits-status reporting requirements in almost two decades, during which time traffic patterns, technology, and business

[1] A "U.S. international service provider" is an entity based in the United States and subject to the Commission's authority that provides telecommunications service between the United States and one or more foreign countries.

[2] *See Data Innovation Initiative* at http://beta.fcc.gov/data/data-innovation-initiative.

practices have changed considerably, as have our national and Commission policies. Accordingly, we eliminate several longstanding reporting requirements that are no longer necessary and seek comment on potential reforms to a number of other requirements to better tailor the data we collect to current market and policy realities. These reforms modernize our data on international services, which will improve our ability to respond to the needs of both U.S. consumers and U.S. international service providers. Data on international services may be necessary to conduct transaction reviews, deregulate as markets become sufficiently competitive, respond to potentially anti-competitive behavior, gauge the effect of our policies and decisions on competition in the international telecommunications markets, and participate in policy discussions in bilateral meetings, multilateral fora, and international organizations.

3. In the First Report and Order we eliminate a number of reporting requirements: (1) the quarterly traffic and revenue reports for large carriers;[3] (2) the quarterly traffic and revenue reports for foreign-affiliated switched resale carriers;[4] (3) the circuit-addition report;[5] (4) the telegraph toll division report;[6] and (5) the requirement to file a traffic and revenue report or circuit-status report for traffic between the continental United States and off-shore U.S. points (*e.g.*, Guam or the U.S. Virgin Islands) or between off-shore U.S. points, or to file separate reports for off-shore U.S. points.[7]

4. We conclude that we continue to need information provided by the annual traffic and revenue reports and circuit status reports, but in the Further Notice of Proposed Rulemaking (FNPRM) we propose several changes to modernize and streamline the reports. Specifically, in the FNPRM we seek comment on whether to:

- consolidate sections 43.61 and 43.82 into one rule, and have a consolidated filing manual for both the traffic and revenue reports and the circuit-status reports;
- change the filing date from March 31 for the circuit-status report and July 31 for the traffic and revenue report to May 1;
- eliminate the use of billing codes and have the data submitted on the proposed filing schedules;
- eliminate the requirement to report the number of messages;
- eliminate the requirement to report private line services based on service speed;
- eliminate the reporting of circuits by service category;
- eliminate the reporting of derived circuits.
- establish a $5 million revenue threshold below which a filing entity need not file annual traffic and revenue data for international resale services;

[3] *See* 47 C.F.R. § 43.61(b).

[4] *See id.*, § 43.61(c).

[5] *See id.*, § 63.23(e).

[6] *See id.*, § 43.53.

[7] *See id.*, § 43.82.

- establish a $5 million annual revenue threshold below which a carrier need not report miscellaneous services;
- have all filing entities submit a Services Report with certain basic information about the entity;
- have filing entities disaggregate fixed and mobile termination data;
- have filing entities report world total traffic by customer class and routing arrangement;
- have filing entities allocate non-route specific revenues to routes served;
- have filing entities report resold private line service on a world-total basis; and,
- have filing entities report data services as miscellaneous services.

We also seek comment on whether providers of interconnected Voice over Internet Protocol (VoIP) should submit data regarding their provision of international telephone services and whether non-common carrier international circuits should be reported.

5. In making these proposals, we have endeavored to strike a balance between the need for data and the burdens imposed by reporting requirements. The changes that we propose today should greatly reduce the burden on smaller carriers and the complexity and detail of the information required from the largest carriers. At the same time, these changes should ensure that the Commission has the information we need to carry out our statutory duties and make information available to the public.

II. BACKGROUND

6. This proceeding is the first comprehensive review of our traffic and revenue reporting requirements since the 1990s.[8] Over that period, the U.S. international telecommunications services markets have changed significantly. As a result of the Uruguay Round of trade negotiations, a number of countries, including the United States, committed to liberalize their domestic and international telecommunications markets and allow additional foreign providers to offer service within the United States. Technological changes have also fundamentally changed the market over the last decade: With the transition from legacy circuit-switched service to IP-based networks, companies increasingly provide Voice over Internet Protocol services that provide essentially the same function to end users as international message telephone service (IMTS). Consequently, the number of providers of international telecommunications services has increased, as has the level of competition in many markets. Further, during this period there has been a substantial increase in the number of international non-common carrier cable and satellite facilities that common carriers use to provide their service. Concurrently, we reformed the process under which U.S. carriers and carriers in different countries settle accounts for the exchange

[8] *See Rules for the Filing of International Circuit-status Reports,* CC Docket No. 93-157, Report and Order, 10 FCC Rcd 8605 (1995) (*1995 Circuit Status Report Order*); Amendment *of Section 43.61,* CC Docket No. 91-22, Report and Order, 7 FCC Rcd 1379 (1992) (*1992 Section 43.61 Amendment Order*). In that Order, we eliminated unnecessary requirements, restructured the rule to require reporting on all services, as opposed to specifically named services, and directed the Chief of the Common Carrier (now Wireline Competition) Bureau to issue a filing manual. *Id*. at 1380, ¶ 9.

of international telecommunications traffic (*i.e.*, the International Settlements Policy or ISP), as a result of which settlement rates for such traffic have generally declined substantially.[9]

7. As changes occur, we must revise the effectiveness and appropriateness of our policies in order to promote competition on U.S. international routes. Above-cost settlement rates continue on a number of routes. Incidents of anti-competitive conduct on some routes also indicate that not all international markets are fully competitive.[10] U.S. carriers have requested changes in policies as well as Commission intervention in instances of anticompetitive conduct by foreign entities. To address these issues, we need relevant data to monitor compliance with its rules and policies and to gauge the effectiveness of our policies in promoting competition in U.S. international markets.

8. In addition, the U.S. international telecommunications industry, which historically was a shared end-to-end monopoly, is evolving into a series of specialized, linked markets. These markets include foreign termination services, international transport services, wholesale telecommunications services provided to U.S. carriers providing IMTS on a resale basis, and retail offerings to U.S. end users. Increasingly, our current international reporting requirements do not capture information relevant to how these markets operate. Accordingly, we need the availability of data that reflects the new marketplace realities.

A. Current Reporting Requirements

9. Part 43 of our rules sets out three reporting requirements for carriers providing international telecommunications services. Section 43.61 requires carriers to report their international telecommunications traffic and revenues (traffic and revenue reports).[11] Section 43.82 requires U.S. carriers to report annually the number of circuits they own or lease and the services for which those circuits are used (circuit-status reports).[12] Section 43.53 requires carriers to report changes to the division of tolls for international telegraph service (toll division reports).[13] We discuss each in turn.

10. **Traffic and Revenue Reports.** Section 43.61 contains three separate reporting requirements. First, section 43.61(a) requires all common carriers providing telecommunications services between the conterminous United States, Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and overseas points, including off-shore U.S. points, to file annual traffic and revenue reports for their international services by July 31 (annual traffic and revenue reports).[14] Carriers must correct any

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[9] *See, e.g., International Settlements Policy Reforms: International Settlement Rates,* IB Docket Nos. 02-324 and 96-21, First Report and Order, 19 FCC Rcd 5709 (2004) (*2004 ISP Reform Order*); *See also, International Settlements Policy Reform,* IB Dockets Nos. 11-80, 09-10 and 05-254, RM-11322, Notice of Proposed Rulemaking, FCC 11-75 (rel. May 12, 2011) (*2011 ISP Reform NPRM*).

[10] *See, e.g., Modifying the Commission's Process to Avert Harm to U.S. Competition and U.S. Customers Caused By Anticompetitive Conduct,* IB Docket No. 05-254, Notice of Inquiry, 20 FCC Rcd 14096 (2005) (*Circuit Blockage NOI*); *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief and Petition of WorldCom Inc. for Prevention of "Whipsawing" on the U.S.-Philippines Route,* IB Docket No. 03-38, 18 FCC Rcd 3519 (Int'l Bur. 2003); Order on Review, 19 FCC Rcd 9993 (2004); Order on Reconsideration and Order, 20 FCC Rcd 14106 (2005) (collectively, *Philippines Stop Payment Orders*).

[11] *See* 47 C.F.R. § 43.61.

[12] *See* 47 C.F.R. § 43.82.

[13] *See* 47 C.F.R. § 43.53.

[14] 47 C.F.R. § 43.61(a). Carriers must provide data that covers the preceding calendar year.

inaccuracies in their submissions that exceed 5 percent of their total reported traffic and revenues by October 31.[15] The Commission staff reviews the submissions and, based on those submissions, prepares and releases to the public a consolidated report: International Telecommunications Data.[16] Second, section 43.61(b) requires carriers with traffic and revenue above certain thresholds to report quarterly their traffic and revenues (Quarterly Large-Carrier Report). These reports must be filed 30 days after the end of each reporting quarter.[17] Third, section 43.61(c) requires U.S. common carriers that provide IMTS resale service (except Commercial Mobile Radio Service (CMRS) carriers)[18] and are affiliated with foreign telecommunications carriers[19] that possess market power on the foreign end of a U.S. international route to file a quarterly report of their traffic and revenues on the affiliated route (Quarterly Foreign-Affiliated Switched Resale Carrier Report).[20] These quarterly reports must be filed within 90 days after the end of the reporting quarter.[21] We do not release the quarterly report information in a public report. All three reports must be submitted in conformance with the filing manual prepared at the direction of the Chief of the Wireline Competition Bureau in consultation with the Chief of the International Bureau.[22]

11. **Circuit-Status Reports.** Section 43.82 requires all U.S. facilities-based international common carriers to file annually, by March 31, information concerning their leased or owned circuits as of December 31 of the previous calendar year (annual circuit-status report).[23] The carriers must identify, for each overseas point they serve, the satellite, submarine cable, and terrestrial links they own or lease,

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[15] 47 C.F.R. § 43.61(a).

[16] The report includes carrier-specific information as well as industry totals. The reports are *available at* http://www.fcc.gov/ib/sand/mniab/traffic/.

[17] 47 C.F.R. § 43.61(b)(2). Under section 43.61(b), a U.S. carrier must file the report if its aggregate minutes of (1) U.S.-billed or (2) foreign-billed facilities-based or facilities-resale switched traffic exceeds one percent of total international traffic reported by all U.S. carriers or if its aggregate minutes of (3) U.S.-billed or (4) foreign-billed facilities-based or facilities-resale switched traffic for any particular foreign route exceeds 2.5% of the total of such traffic reported by all U.S. carriers on that route. 47 C.F.R. § 43.61(b). "Facilities-based services" are services "provided by a carrier utilizing international circuits in which it has and ownership interest. "Facilities-resale services" are services "provided by a carrier utilizing non-switched international circuits leased from other reporting international carriers." *Manual for Filing Section 43.61 Data* (June 1995) (*Section 43.61 Filing Manual*). The *Section 43.61 Filing Manual* is *available at* http://www.fcc.gov/wcb/iatd/intl.html.

[18] 47 C.F.R. § 20.3 defines a "commercial mobile radio service" as a "mobile service that is . . . interconnected [to the public switched telephone network] and [a]vailable to the public." *See also* 47 U.S.C. § 332(d)(1). 47 C.F.R. § 20.9 states that provision of commercial mobile radio service is "common carriage." *See also* 47 U.S.C. § 332(c)(1).

[19] The term "foreign telecommunications carrier" or "foreign carrier" refers to an entity, whether government or privately owned, that provides domestic telecommunications services within the territory of a foreign country, or provides international telecommunications services between that country and other countries. *See* 47 C.F.R. § 63.09.

[20] 47 C.F.R. § 43.61(c). A U.S. carrier (other than a CMRS carrier) must file a quarterly traffic and revenue report for its IMTS resale service for each route on which it is affiliated with a foreign carrier when that foreign carrier meets two conditions. First, the affiliated foreign carrier must have market power in the foreign market and, second, the affiliated foreign carrier must collect settlement payments from U.S. IMTS carriers. Section 63.09 defines when a carrier is affiliated with another carrier. 47 C.F.R. § 63.09(e).

[21] 47 C.F.R. § 43.61(c). CMRS carriers are exempt from filing these reports.

[22] 47 C.F.R. § 43.61(a)(3).

[23] 47 C.F.R. § 43.82.

and indicate which circuits are active and which are idle.[24] The Commission staff reviews the submissions and prepares and releases to the public a consolidated Section 43.82 Circuit-status Data report.[25] Section 63.23(e) requires carriers that have been certified as resellers of private lines to report, by March 31 of the following year, the number of circuits they added during the year and to identify the services for which the circuits were used.[26]

12. **Telegraph Toll Division Reports.** Section 43.53 requires carriers that provide international telegraph service "to file a report with the Commission within 30 days of the date of any arrangement concerning the division of total telegraph charges on such communication other than transiting."[27] Section 43.53 also requires international telegraph carriers to file any subsequent changes to those arrangements within 30 days.[28]

B. History of Proceeding

13. As part of the 2002 biennial regulatory review,[29] we released a staff report prepared by the International Bureau that set forth various recommendations with respect to rules concerning the provision of international telecommunications.[30] Among other things, the International Bureau staff found that, although the traffic and revenue reports required by section 43.61 and the circuit-status report required by section 43.82 continue to be useful to the Commission and the industry, we should consider modifying these reporting requirements to enhance the benefits that these reports provide.[31] Additionally, the International Bureau staff recommended repeal of section 43.53 in light of market changes and the decreasing use of telegraph services.[32]

14. In April 2004, we issued the NPRM initiating this proceeding.[33] In the NPRM, we proposed to retain the annual traffic and revenue report and sought comment on several proposals to modernize the report. We also invited comment on several proposals to streamline the annual circuit-

[24] Pursuant to section 43.82, the Chief of the International Bureau has issued a manual instructing the filing entities how to file their data, listing the U.S. points for which they must file data, and detailing the information to be provided. 47 C.F.R. § 43.82. *See Manual for Filing Section 43.82 Circuit Status Data in accordance with the FCC's Rules and Regulations* (*Section 43.82 Filing Manual)*. The *Section 43.82 Filing Manual* is *available at* http://www.fcc.gov/ib/pd/pf/csmanual.html. For active circuits, carriers must identify the services for which they used each circuit.

[25] The reports are *available at* http://www.fcc.gov/ib/pd/pf/csmanual.html.

[26] 47 C.F.R. § 63.23(e).

[27] 47 C.F.R. § 43.53(a).

[28] 47 C.F.R. § 43.53(b).

[29] *See 2002 Biennial Regulatory Review*, GC Docket No. 02-390, Report, 18 FCC Rcd 4726 (2003), *aff'd sub nom. Cellco Partnership d/b/a Verizon Wireless v. FCC & USA*, 357 F.3d 88 (D.C. Cir. 2004).

[30] *International Bureau, Federal Communications Commission, Biennial Regulatory Review 2002,* IB Docket No. 02-309, GC Docket 02-390, 18 FCC Rcd 4196 (2003).

[31] *Id.* at 4210-11, 4232.

[32] *Id.*

[33] *Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules*, IB Docket No. 04-112, Notice of Proposed Rulemaking, 19 FCC Rcd 6460 (2004) (*NPRM*).

status report. In addition, we proposed to eliminate the telegraph toll division reporting requirement because it no longer serves any useful purpose as traffic volumes for telegraph services have declined significantly.[34]

15. In the NPRM, we proposed a number of ways to modernize the traffic and revenue report and to simplify the information the carriers are required to file. First, we proposed eliminating the requirement for carriers to report the number of international messages they carry.[35] Second, we proposed eliminating the requirement that carriers report traffic, revenue, and circuit-status data for traffic and circuits between a U.S. domestic point and an off-shore U.S. point or between off-shore U.S. points.[36] Third, we proposed to adopt a revenue threshold below which carriers providing IMTS resale or miscellaneous services would not be required to file traffic and revenue data.[37] Additionally, we sought comment on the usefulness of the Quarterly Large-Carrier Reports and Quarterly Foreign-Affiliated Switched Resale Carrier Reports.[38] Beyond these proposals, we also sought comment on a number of staff recommendations from the Wireline Competition and International Bureaus, including the use of filing schedules rather than billing codes, requiring carriers to break out customer data for facilities IMTS traffic[39] between traffic sold to U.S. end-users vs. traffic sold to other carriers, and requiring separate reporting of non-route-specific revenues.[40]

16. In response to the NPRM, seven parties – AT&T Corp. (AT&T), Cingular Wireless LLC (Cingular), MCI Inc. (MCI), SES Americom and PanAmSat Corporation jointly (SES Americom/PanAmSat), Sprint Corporation (Sprint), and Verizon Communications, Inc. (Verizon) filed comments. AT&T, MCI, Sprint, and Verizon filed reply comments. In addition, three parties that did not file initial comments filed reply comments – the law firm of Kelley, Drye & Warren (KDW),[41] Tyco Communications (US) Inc. (Tyco), and Verizon Wireless. After the comment cycle concluded, Commission staff had numerous meetings with carriers and received a number of *ex parte* filings.[42]

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[34] NPRM, 19 FCC Rcd at 6485, ¶ 67.

[35] *Id.* at 6472, ¶ 28.

[36] *Id.* at 6472-73, 6483 ¶¶ 29-31, 59.

[37] *Id.* at 6474, ¶ 35 (resellers), and 6475-6, ¶ 41 (miscellaneous services).

[38] *Id.* at 6478-80, ¶¶ 50-54, (Quarterly Large-Carrier Reports), and 6481-82, ¶¶ 55-57 (Quarterly Foreign-Affiliated Switched Resale Carrier Reports).

[39] "Facilities IMTS" is IMTS provided by a U.S. service provider over a facility that the service provider owns, leases, or controls and by which a call leaves or enters the United States.

[40] *See* NPRM, Appendix C, 19 FCC Rcd 6505 (*Staff Recommendations*).

[41] Kelley, Drye & Warren, Reply Comments of Kelley, Drye & Warren (filed Aug. 24, 2004) (KDW Reply). The reply was accompanied by a Motion for Leave to File Reply Comments One Day Late. It is the policy of the Commission that motions for extension of time shall not be granted routinely. See Section 1.46 of the Commission's rules, 47 C.F.R § 1.46. However, because the Commission wishes the most complete record possible, and no one would be harmed by accepting the late-filed comments, we grant KDW's motion.

[42] *See, e.g.,* Letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest Communications Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated March 11, 2005; letter from Jacquelynn Ruff, Vice President, International Public Policy & Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated April 20, 2005 (Verizon April 20, 2005 *Ex Parte*); letter from David A. Nall, Director-Government Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated April 20, 2006; letter from Adam Kupetsky, Regulatory Counsel, Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated April 27, (continued….)

Commenters have also raised issues regarding these reporting requirements in their comments in biennial review proceedings.[43]

III. FIRST REPORT AND ORDER

17. As we explain below, there are several reporting requirements that we find should be eliminated at this time. We conclude that we no longer need quarterly traffic and revenue filings. Similarly, we do not need quarterly circuit addition reports. We also find that it no longer makes sense to have carriers file separately for off-shore U.S. points. In addition, we find that the toll division reports are out-dated and we no longer need them to be filed. We conclude, however, that we should continue to require annual international traffic and revenue data and international circuit data in order to protect the interests of U.S. consumers and U.S. international service providers, and to facilitate the transition to competition in international markets. This includes certain route-specific data from facilities-based carriers, because route-by-route traffic and revenue information is necessary for the implementation and enforcement of our pro-competitive international policies. We also need international resale traffic and revenue data on a world-wide basis since most international calls are initiated with a resale carrier. In the FNPRM we propose a number of ways to modernize the information that we collect and to make it more tailored to our needs.

A. Elimination of the Quarterly Large-Carrier Reports (Section 43.61(b))

18. We will eliminate the Quarterly Large-Carrier Reports required by section 43.61(b). Although we continue to need to receive international traffic and revenue data, we find that annual reporting will provide us with sufficient information and thus we no longer need to receive quarterly filings.

19. Facilities-based and facilities-resale carriers are currently required to file a quarterly traffic and revenue report for any quarter in which such carrier's traffic exceeds one of four specified thresholds.[44] This reporting requirement was adopted in 1997 as part of the *Benchmark Order*[45] as a way to detect "one-way bypass"[46] that might result from international simple resale (ISR) arrangements, which were becoming more frequent at that time.[47] At that time, we concluded that we might be able to detect one-way bypass by identifying any sudden increases in the ratio of U.S. outbound to U.S. inbound traffic. That is, if the proportion of a carrier's outbound traffic increased relative to its inbound traffic, it could be because foreign carriers were sending traffic into the United States by means of resale, bypassing the traditional settlements process. To facilitate detection of such imbalances, the rules required large carriers to file quarterly traffic and revenue data.

(Continued from previous page)
2006; letter from Staci L. Pies, President, The VON Coalition, to Kevin J. Martin, Chairman, FCC, dated June 28, 2007 (VON Coalition June 28, 2007 *Ex Parte*).

[43] *See, e.g.,* AT&T Comments in IB Docket No. 10-268 (filed Jan. 31, 2011) at 3-6; Verizon and Verizon Wireless Comments in IB Docket No. 10-268 (filed Jan. 31, 2011) at 6.

[44] *See* note 17, *supra.*

[45] *International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806, 19919-20 (1997) (*Benchmark Order*).

[46] *Id.* at 19920. The term "one-way bypass" refers to a practice whereby foreign carriers take advantage of increasingly cost-based rates to terminate traffic in the United States through ISR arrangements (international simple resale, or the provision of switched services over private lines) while requiring U.S. carriers to terminate traffic to their own country under exorbitant traditional accounting rate arrangements.

[47] *Id.* at 19920.

20. In the NPRM we sought comment whether the continued application of the Quarterly Large-Carrier Reports is necessary at this time.[48] In particular we sought comment on the effect that our *2004 ISP Reform Order* to eliminate the ISR policy has on the need to collect quarterly traffic and revenue data from large carriers.[49] All those filing comments in response to the NPRM support elimination of the reports.[50] Verizon argues that the Quarterly Large Carrier Reports are no longer needed to detect market distortions.[51] AT&T states that the reports are no longer necessary because almost all traffic is now terminated under commercial arrangements rather than traditional settlements.[52] We agree that the Quarterly Large Carrier Reports are no longer needed to detect market distortions. We note that in practice, we have found that sudden changes in international traffic flows are not necessarily related to one-way bypass or other anti-competitive causes.[53] Moreover, we have found that the quarterly traffic information filed by the carriers has often been subject to substantial revision and thus has been unreliable as an indicator of changes in traffic ratios.

21. We therefore conclude that requiring carriers to continue to file quarterly traffic reports will serve no useful purpose. Instead, we find that it will be sufficient to rely on annual traffic and revenue data regarding settlement payments and minutes, as well as on complaints by U.S. carriers, to detect and remedy anti-competitive activity by foreign carriers, including one-way bypass.[54] We therefore eliminate section 43.61(b).

B. Elimination of the Quarterly Foreign-Affiliated Switched Resale Carrier Reports (Section 43.61(c))

22. Similarly, we find that annual traffic and revenue filings provide sufficient information so that we no longer need to require the filing of the Quarterly Foreign-Affiliated Switched Resale Carrier Reports. Currently, section 43.61(c) requires U.S.-authorized providers of IMTS resale that are affiliated with a foreign carrier to file quarterly traffic and revenue reports on their affiliated routes if they: (1) have sufficient market power at the foreign end of an international route to affect competition adversely in the U.S. market, and (2) collect settlement payments from U.S. carriers for traffic affiliated in its home market.[55] This report arose out of carrier concerns that overseas incumbent or monopoly telecommunications providers might use their market power to favor their affiliates that operate as carriers in the U.S. market. The report was intended to provide us an early warning of attempts by incumbent carriers to engage in "price squeeze" behavior.

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[48] *See* NPRM, 19 FCC Rcd at 6478-80, ¶¶ 50-54.

[49] *Id.* at 6480, ¶ 52 (citing *2004 ISP Reform Order,* 19 FCC Rcd at 5725, ¶ 31).

[50] *See, e.g.*, Letter from David A. Nall, Sprint, to Marlene H Dortch, FCC, dated April 26, 2006 at 1 (Sprint April 26, 2006 *Ex Parte*); letter from Amy L. Alverez, AT&T, to Marlene H Dortch, FCC, dated February 26, 2010 at 2 (AT&T Feb 26, 2010 *Ex Parte*).

[51] Verizon Comments at 10.

[52] AT&T Comments at 10.

[53] For instance, IMTS price decreases in the United States can stimulate outbound demand, changing the outbound to inbound traffic ratio. Also, reductions in traditional settlement rates by a foreign carrier can cause U.S. carriers to transfer traffic from ISR to traditional settlement arrangements, thereby changing outbound to inbound traffic ratios.

[54] *See* Sprint Comments at 3 (carriers monitor shifts in traffic patterns); MCI Reply Comments at 3 (maintaining the annual traffic and revenue report will allow the Commission to track market distortions).

[55] 47 C.F.R. § 43.61(c). For purposes of the rule, the terms "affiliated" and "foreign carrier" are defined in section 63.09 of our rules, 47 C.F.R. § 63.09.

23. In the NPRM we sought comment whether the continued application of the Quarterly Foreign-Affiliated Switched Resale Carrier Reports is necessary at this time.[56] Verizon and KDW both support elimination of this reporting requirement.[57] AT&T, on the other hand, argues that the reporting requirement continues to prevent abuse of foreign market power.[58] As a practical matter, we have not received any complaints from U.S. carriers alleging such predatory behavior; nor have the reports revealed any such behavior. Furthermore, we find that the 43.61(c) quarterly report is not the only way we can address concerns that the settlement rates on a particular route remain above cost. We agree with Verizon that the 43.61(a) annual report gives us enough information to detect such market distortions.[59] We agree with Verizon that given the way the market has changed in recent years, an individual reseller of switched IMTS, even one that is affiliated with a dominant foreign carrier, would likely not have sufficient market power to distort the U.S. IMTS market.[60] We therefore eliminate section 43.61(c).[61]

C. Elimination of the Circuit-Addition Report (Section 63.23(e))

24. We also find that the annual circuit-status reports provide sufficient information so that we no longer need the circuit-addition reports. Section 63.23(e) requires carriers that have been certified as resellers of private lines to report, by March 31 of the following year, the number of circuits they added during the year and to identify the services for which the circuits were used.[62] In 1995, we required non-dominant facilities-based carriers to file the annual circuit-status report and exempted them from filing the circuit-addition report then contained in section 63.15 of the rules.[63] We did so because the circuit-status report provides the same information that is in the circuit-addition report.[64] Because we did not require resellers of international private lines to file the circuit-status report, we required such carriers to file the circuit-addition report.[65]

25. In the NPRM we proposed to eliminate the circuit-addition report.[66] Only one commenter specifically addressed this issue, and it supports elimination of the report.[67] Because the facilities-based carriers from which private line resellers purchase international circuits report those circuits on their circuit-status report, we have a record that the circuits are being used. As a result, we find that the information from the annual circuit-addition reports do not justify the continuing burden of the reporting requirement. We therefore eliminate section 63.23(e).

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[56] *See* NPRM, 19 FCC Rcd at 6478-80, ¶¶ 50-4.

[57] Verizon Comments at 10; KDW Reply Comments at 1-2.

[58] AT&T Comments at 10. *See also* MCI Reply Comments at 3 (agreeing with AT&T Comments).

[59] Verizon Comments at 10.

[60] *Id.*

[61] Because we are here eliminating section 43.61(c), our prior request for comment on whether we should include definitions of "affiliated" and "foreign carrier" in the rule is moot. *See* NPRM, 19 FCC Rcd at 6487, ¶ 72.

[62] 47 C.F.R. § 63.23(e).

[63] *1995 Circuit Status Report Order,* 10 FCC Rcd at 8607, ¶ 10.

[64] *Id.*

[65] *Id.* at 8606-7, ¶ 11.

[66] NPRM, 19 FCC Rcd at 6483, ¶ 59.

[67] KDW Reply Comments at 1.

D. Elimination of the Division of Telegraph Tolls Report (Section 43.53)

26. We also shall eliminate the requirement in section 43.53 that telegraph carriers file with us copies of all their agreements with foreign carriers governing the division of tolls for international telegraph traffic.[68] In the NPRM we proposed to eliminate this filing requirement.[69] We agree with the commenters that the decline in the telegraph industry has made these reports unnecessary.[70]

27. At one time, foreign telegraph providers with market power sought to "whipsaw" U.S. telegraph carriers by getting one U.S. carrier to agree to a settlement arrangement more favorable to the foreign carrier than those of other U.S. carriers serving the route and then shifting more traffic to the first carrier. To deal with this, we developed the "uniform settlements policy" in the 1930s that required all U.S. carriers to settle with a foreign provider on the same terms and conditions. The purpose of the division of tolls reports was to facilitate detection of any non-conforming arrangements. The volume of telegraph traffic has declined sharply over the years, however, as telegraph service has largely been replaced by other means of communication. Those volumes are sufficiently small that this reporting requirement no longer serves a useful purpose.[71] Remaining telegraph carriers are still under an obligation to follow the uniform settlements policy. We would still have the ability to enforce that policy if violations were to come to our attention. For this reason, we believe that the low and declining volumes of telegraph traffic do not justify continuing the burden imposed by the reporting requirement. We therefore eliminate section 43.53.

E. Annual Traffic and Revenue Reports

28. In their comments, carriers differed on the need to retain the reporting requirements. Some agreed that there is a continued need for the report,[72] while others argued that we could obtain the information from other sources.[73] After reviewing the comments on alternative sources of information, as we discuss below, we conclude that those sources do not provide a sufficient substitute for the type of data that we collect and otherwise are not adequate to meet our needs as described below. Carriers did not address in their comments the burden that the traffic and revenue report imposes on them, though one large carrier, in a recent *ex parte* letter, stated that the section 43.61 report requires approximately 350 person-hours to compile.[74] The changes to the report that we propose below in the Further Notice of Proposed Rulemaking portion of this document should simplify the process of filing the report and reduce the number of hours required to prepare it.

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[68] 47 C.F.R. § 43.51.

[69] NPRM, 19 FCC Rcd at 6485, ¶ 67.

[70] MCI Comments at 4, Sprint Comments at 1.

[71] In 2009, we granted the request from MCI International Inc. not to report its miscellaneous international telex and telegraph services due to the *de minimis* associated revenues. Other carriers that previously reported providing telex and telegraph services have either sold or discontinued the services. *See* 2008 International Telecommunications Data, Appendix C.

[72] AT&T Comments at 1-2; MCI Reply Comments at 1.

[73] Verizon Comments at 3-7.

[74] Letter from Eric H. Loeb, Vice President, International External & regulatory Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated April 21, 2011. Cf. Verizon Comments at 7 (generally describing how the Sections 43.61 and 43.82 filing requirements are "unduly burdensome.").

29. Considering the importance of the information in this report to the performance of our statutory responsibilities, including transaction review, protection of U.S. consumers against anti-competitive conduct, and promotion of competition on U.S. international routes, we conclude that the benefits of retaining the report outweigh the burdens. We also note that this data is used by other government agencies, such as the Department of Justice (DOJ) and the Office of the United States Trade Representative (USTR), as well as others including international organizations, researchers, and other interested members of the public.[75] For example, USTR cited our traffic and revenue data in its most recent annual report on compliance with telecommunications trade agreements.[76] DOJ uses the data in its merger review.[77] Consequently, we shall continue to require carriers to file the annual traffic and revenue reports, albeit on a streamlined basis.

1. Route-Specific Reporting for Facilities-Based Carriers

30. We shall retain the requirement for facilities-based providers of IMTS and private line services to file data traffic and revenue data for each international route on which they provide service. While we propose changes in the FNPRM that will substantially reduce the amount of information carriers must report for each route, we find that route-specific traffic and revenue data from the annual reports provides us with information that we need to develop and implement policies to facilitate the continuing transition to competition in international markets, to monitor compliance with rules and policies, to gauge the effect of our decisions on competition in the international market, and for policy discussions in bilateral meetings, multilateral forums, and international organizations. For example, we relied on route-specific data to determine that certain routes were sufficiently competitive to warrant lifting the International Settlement Policy from benchmark-compliant routes.[78] With removal of the ISP, it has been necessary for us to effectively respond to concerns of anticompetitive conduct on international routes as discussed below. Continued route-specific reporting provides us with the information we need for this purpose. As AT&T notes, with the removal of the ISP and its associated filing requirements, the only information we have on termination rates for those routes is traffic and revenue data submitted pursuant to section 43.61.[79] In short, route-by-route traffic and revenue information is necessary for our implementation and enforcement of our pro-competitive international policies.

31. Verizon argues that we could rely on world-total IMTS traffic and revenue data.[80] We note, however, that each international service point generally has its own service providers and that each point is a separate market. Those markets differ from each other in the degree of competition that exists on that route. While the international IMTS market in many countries is becoming more competitive, foreign carriers in some countries retain the ability to distort international markets to the detriment of U.S. carriers and consumers. We agree with AT&T that the traffic and revenue reports provide the most

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[75] Over the past month there have been approximately 700 "hits" on the FCC webpage with the public reports generated by this data – www.fcc.gov/ib/sand/mniab/traffic/.

[76] Ambassador Ronald Kirk, Office of the United States Trade Representative, 2011 Section 1377 Review On Compliance with Telecommunications Trade Agreements at 4-6.

[77] *See, e.g., United States of America v. Worldcom and Sprint,* Complaint, at 34-36, ¶¶ 89-95, Appendices B and C (June 26, 2000).

[78] *See 2011 ISP Reform NPRM* at ¶ 60; *2004 ISP Reform Order*, 19 FCC Rcd at 5718-19, ¶ 20.

[79] AT&T Reply Comments at n.7.

[80] Verizon April 20, 2005 *Ex Parte* at 2.

important information in our efforts to prevent the abuse of market power by foreign carriers.[81] A number of telecommunications providers in other countries continue to possess significant market power, which can be used to distort the market, ultimately to the detriment of U.S. consumers and carriers.[82] The availability of foreign termination services for U.S. calls is directly dependent on market conditions in each foreign destination country. Because market conditions differ substantially from country to country, the potential for anti-competitive harm differs on each route. Indeed, we have taken steps to respond to situations in which foreign incumbent carriers exercised market power to the detriment of U.S. consumers.[83] In 2009, we relied on the information submitted pursuant to section 43.61 in responding to anti-competitive behavior by foreign carriers on an U.S. international route.[84] Our action was necessary to ensure that the behavior on the route was not viewed as acceptable precedent on other routes. This action was requested by AT&T and Verizon and coordinated with other U.S. government agencies. Most recently, in considering waivers of the Commission's Benchmark Policy on settlement rates in order to promote renewal of direct communications between the United States and Cuba, we relied on route-specific international traffic and settlement rate information in the Caribbean region to develop a policy that would take into account consumer interests in moving towards lower calling rates on that route as direct links are re-established between the two countries.[85]

32. Additionally, route-specific traffic and revenue information is necessary to our review of proposed mergers and other transactions. Because we have long recognized that each international route is a distinct market,[86] we need the route-specific data generated by the traffic and revenue reports for our review of transactions.[87] Our definition of international markets as route-specific is based on the idea of

[81] AT&T Reply Comments at 4.

[82] *See, e.g., Philippines Stop Payment Orders,* 18 FCC Rcd 3519, 19 FCC Rcd 9993*; Circuit Blockage NOI,* 20 FCC Rcd 14096*.* As we observed in our *2004 ISP Reform Order*, "settlement rates on most routes continue to be above cost and there exists the continued potential for anticompetitive conduct and other forms of market failure." 19 FCC Rcd at 5711, ¶ 2.

[83] *See, e.g., Philippines Stop Payment Orders,* 18 FCC Rcd 3519, 19 FCC Rcd 9993.

[84] Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S-Tonga Route, IB Docket No. 09-10, Order and Request for Further Comment, DA 09-1325, 24 FCC Rcd 8006 (IB 2009), application for review pending; Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S-Tonga Route, IB Docket No. 09-10, Second Order and Request for Further Comment, DA 09-2422, 24 FCC Rcd 13760 (IB 2009), application for review pending.

[85] *IConnect Wholesale Inc. d/b/a TeleCuba; Petition for Waiver of the International Settlements Policy and Benchmark Rate for Facilities-Based Telecommunications Services with Cuba*, IB Docket No. 10-95, Memorandum Opinion and Order, 26 FCC Rcd 5217, 5226-27, ¶¶ 25-28 (IB 2011).

[86] *See, e.g., International Competitive Carrier Policies*, CC Docket No. 85-107, 102 FCC 2d 812 at ¶¶ 37-38 (1985). Our treatment of individual routes as separate markets is consistent with the market definition that the U.S. Department of Justice (DOJ) applies in its analysis of applications for mergers. DOJ stated that "[i]nternational wireline long distance telecommunications services provided between the United States and each of the foreign countries … are lines of commerce and relevant product markets for purposes of Section 7 of the Clayton Act." *See United States of America v. Worldcom and Sprint,* Complaint, at 34, ¶ 89 (June 26, 2000). Both the DOJ and the FCC's separate market definitions are based on the DOJ/FTC Horizontal Merger Guidelines.

[87] In reviewing mergers affecting U.S. international telecommunications markets, both the Commission and the U.S. Department of Justice use route-specific data to analyze market concentration. *See SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control,* WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC 18290, 18373-76, ¶¶ 159-167 (2005) (*SBC/AT&T Merger Order*); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and (continued….)

"demand substitutability," *i.e.*, that U.S. consumers do not consider calls to one country as an adequate substitute for calls to another. One of the primary uses of the traffic and revenue data in transaction reviews is to calculate the applicants' market share for each international market, an essential step in evaluating any transaction.

33. We have also concluded that we should retain the annual traffic and revenue report for international private line service. We note that international private line service represents a significant and growing part of service providers' overall business. Besides using private lines for their internal communications, a growing number of carriers are using international private lines for providing telecommunications and other services such as enhanced and information services to their customers. As a result, we have concluded that we shall retain the international private line report. As in the case of IMTS, each overseas service point constitutes a separate market. As a result, we conclude that we shall continue to need route-by-route traffic data for international private line services.

34. For the reasons stated above, we conclude that the collection of aggregate world-total data would not be an adequate substitute for route-specific data, as it will not provide the specific data that we need to perform our functions.[88] Consequently, we shall continue to require annual facilities-based IMTS traffic, revenue, and settlement payment information and private line data to be reported on a route-specific basis.

2. World Total Reporting for Resale Carriers

35. Similarly, we need to continue obtaining information about IMTS resale. IMTS resale has become a major part of the retail IMTS market and represents a significant and growing portion of the IMTS provided to residential and business end users, and thus we need this information to protect the interests of U.S. consumers.[89] In 1992, 86 carriers provided IMTS resale, reporting 565 million minutes of traffic and $511 million in revenues.[90] More recently, in 2009, the number of carriers reporting IMTS resale revenues increased to 1,232, reporting 82.6 billion minutes of traffic and $7.4 billion in revenue.[91] Therefore we will continue to collect world-total traffic and revenue data for IMTS resale. In the

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Order, 20 FCC 18433, 18517-22, ¶¶ 163-177 (2005) (*Verizon/MCI Merger Order*). *See also United States of America v. Worldcom and Sprint,* Complaint, at 34-36, ¶¶ 89-95, Appendices B and C (June 26, 2000).

[88] In their April 19, 2005 *ex parte* meeting, AT&T, Sprint, Tyco and Verizon offered a counter proposal that each carrier file on a global, aggregate, annual basis (1) minutes, (2) revenues, (3) inbound settlements, (4) outbound settlements, and (5) circuits (64k equivalents). Verizon April 20, 2005 *Ex Parte*.

[89] *See Verizon/MCI Merger Order*, 20 FCC Rcd at 18517 n. 453; *SBC/AT&T Merger Order*, 20 FCC Rcd at 18373 n. 451.

[90] *See* Trends in the International Telecommunications Industry, Table 18 (rel. Apr. 3, 2001). Available at http://www.fcc.gov/wcb/iatd/intl.html.

[91] *See* 2009 International Telecommunications Data (rel. April 2011). The 2009 report and reports from previous years are available at http://www.fcc.gov/ib/sand/mniab/traffic/. In the early 1990s, IMTS resale carriers accounted for approximately 6% of the IMTS minutes provided by Facilities IMTS carriers. Federal Communications Commission, Trends in the International Telecommunications Industry, Table 18 (rel. Aug. 4, 1995). Since not all IMTS resale is to end users, the IMTS resale figures overstate the share of the retail IMTS market served by resellers. In 2009, due to double counting because of the extensive resale of IMTS, IMTS resale minutes actually accounted for more than 100% of the IMTS minutes billed by U.S. facilities IMTS carriers. 2009 International Telecommunications Data, Tables A1 and D. (To account for this double counting and to make the information we collect is more useful, in the FNPRM we propose to require resale carriers to separate their traffic and revenue by categories of customers. *See* Section IV.B.2.f, paras. 80-86, *infra*.)

FNPRM, we propose to exclude service providers with only IMTS resale revenues if their annual revenues are less than $5 million.[92]

36. We will also continue to require CMRS carriers to report their IMTS resale traffic and revenue. We find unpersuasive the arguments that we should exempt CMRS carriers who are offering international service via resale from filing annual reports because their IMTS traffic is *de minimis* with respect to their domestic traffic and revenues, or because their provision of IMTS is ancillary to their primary business of providing domestic mobile telephone services.[93] They have not demonstrated any rationale for treating CMRS carriers differently than other international IMTS resale carriers.[94] CMRS carriers have been providing an increasing amount of international service and have become major providers of international service.[95] International service provided by CMRS carriers now comprises a significant portion of total IMTS resale traffic,[96] and their market share in U.S. international markets continues to grow.[97] To exempt CMRS carriers from filing their annual IMTS resale traffic and revenue would mean that we would not get information on a major part of the IMTS resale market.

37. The IMTS resale market segment has also become important to traditional IMTS carriers, who sell large volumes of wholesale facilities-based IMTS minutes of international telephone calls to IMTS resale carriers. In addition, most facilities-based carriers also engage in extensive resale of IMTS through various subsidiaries. Thus we cannot fully understand the IMTS market without information about resale. We, therefore, conclude that we should continue to require international service providers, including CMRS carriers, to file traffic and revenue reports for their IMTS resale traffic.

3. No Other Source of Information

38. We find that we need to obtain international traffic and revenue data information directly from the international service providers because there are no other reliable sources of information on international traffic and revenue that will give us the full range of information that we need. In order to be a viable substitute for the information that we collect through Part 43 reporting requirements, an alternative source of information would need to be, among other things, disaggregated by route and by company, consistent across all companies, representative of the entire industry, available in a timely manner, and historically consistent. We have examined the alternative sources of data that the commenters proposed and found that they do not meet these standards.[98] First, international traffic and

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[92] *See* Section IV.B.2.k, paras. 95-97, *infra.*

[93] Cingular Comments at 1; Verizon Wireless Reply Comments at 1.

[94] AT&T Reply Comments at 3 n. 3.

[95] In 2004, CMRS carriers accounted for 2.1 billion minutes, approximately 5% of all IMTS resale minutes, and $0.6 billion, approximately 12% of IMTS resale revenues. By 2009 CMRS carriers share of the IMTS resale market has grown to 10.6 billion minutes, approximately 13% of IMTS resale minutes, and $1.8 billion, approximately 24% of IMTS resale revenues. 2004 International Telecommunications Data, Table D; 2009 International Telecommunications Data, Table D.

[96] The top five CMRS carriers reported more than 10.5 billion IMTS resale minutes and more than $1.7 billion in IMTS resale revenues, indicating significant growth of intermodal (*i.e*., facilities based vs. IMTS resale) competition in U.S. international traffic. 2009 International Telecommunications Data, Table D.

[97] CMRS IMTS minutes have increased at an annual rate of 44%. *Compare* 2009 International Telecommunications Data, Table D and 2001 International Telecommunications Data, Table D.

[98] Several carriers suggest that this information can be obtained from alternative sources such as the Commission's Form 499-A report. Other suggested sources are carrier websites, from other third-party private sources or the (continued….)

revenue information is not available through other Commission data collections. Second, other available information regarding international traffic provides very limited data and is not the type of information we need to conduct our analyses.[99] Third, much of the information available from these sources is based upon the data collected and published by the Commission.

39. Several commenters argue that we could rely upon the information provided to the Commission to implement the Universal Service Fund (USF).[100] We find, however, that the data gathered under FCC Form 499 is an inadequate substitute for the information contained in the international traffic and revenue report. The Form 499 data, which is collected for enforcing USF contributions, does not provide any information on individual services, provides only nationwide or worldwide total revenues, and provides no information on international settlements. For these reasons, we conclude that the Form 499 data are not suitable for monitoring international telecommunications markets.

40. We similarly find the information collected by other government agencies to be inadequate substitutes for the Section 43.61 report. For example, the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, which prepares an annual report on international business called the Survey of Current Business, includes information on U.S. international telecommunications. The BEA report is intended to provide information on the U.S. balance of payments; it is not intended to be used in monitoring and setting policies for international communications services. The data in the BEA report are too limited to provide guidance in monitoring and setting policies for international telecommunications. First, the report combines, without differentiation, information on regulated basic and non-regulated enhanced services. Second, the BEA report addresses only 33 overseas points, rather than the 219 overseas points that U.S. carriers serve. Third, the BEA report does not report the number of IMTS minutes U.S. carriers handle nor does it give any information on the amounts that U.S. carriers pay out to their foreign correspondents for terminating U.S.-originated traffic. Finally, the BEA report does not gather information on international telecommunications activities during the period in which the activity took place. Section 43.61 requires the carrier to report for a given year, 2009 for example, information on services provided during that period. BEA, by contrast, requires carriers to report exchanges of money in the year in which the exchange is made. Therefore, BEA would report on some activity in 2009, if the carriers exchanged money with their correspondents in that year, but would report information on other 2009 activities in 2010, if the exchange took place in that year. This feature makes the BEA information less useful for giving a picture of the extent of 2009 activities.

41. One commenter has also suggested that we could use information available on the websites of the carriers.[101] The information available from these websites, however, is only for retail rates. They do not provide the traffic and revenue data which we need. We cannot determine termination rates or traffic patterns based on retail rates.

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International Telecommunication Union (ITU), the Organization for Economic Cooperation and Development (OECD), and other multilateral groups that produce studies on global telecommunications. *See* Verizon April 20, 2005 *Ex Parte.*

[99] Specifically, we considered the following sources: the FCC Form 499-A, the U.S. Department of Commerce Bureau of Economic Analysis Survey of Current Business, Telegeography, and Arbinet. Many of these sources lacked key data needed for our analyses, such as traffic volumes or route-specific data, were limited in scope, or were proprietary. Indeed, Telegeography itself is a prominent *user* of the Commission's Section 43.61 data.

[100] Verizon Comments at 6; Verizon Wireless Reply Comments at 2; Letter from Melissa Newman, Qwest, to Marlene H. Dortch, FCC, dated March 11, 2005 (Qwest March 11, 2005 *Ex Parte*) at 1.

[101] *See* Verizon April 20, 2005 *Ex Parte*.

42. We also conclude that we are unable to rely upon information derived from third-party reports, such as reports prepared by private-sector firms like Telegeography or the information available from Arbinet. Neither is a substitute for the international traffic and revenue data from international service providers.[102] One of the problems of reports prepared by private-sector firms is that one cannot tell whether all the carriers reported their traffic and revenue information on a consistent basis. The Section 43.61 Filing Manual instructs the carriers how to calculate the information they report. Second, companies that prepare such reports also restrict the use that can be made of the information in them. That is, we would not be able to make figures we take from the reports available to the public. This fact would seriously compromise our ability to rely upon proprietary information in deciding regulatory matters. It would also prevent other interested persons from commenting on the figures, or otherwise challenging the validity of a particular reported number.

43. Further, there are particular aspects of the Telegeography report and the information available from Arbinet that make them inadequate substitutes for the section 43.61 report. With respect to the Telegeography reports, such information would not be useful as a substitute for the section 43.61 report because a major source for information in the Telegeography reports is the section 43.61 report itself. Thus, if we did not collect the data, and make it publicly available, we are not sure what information Telegeography would be able to use in its reports. With respect to the information from Arbinet, while the information is derived from sources other than the section 43.61 report, the information is too limited to make it a useful substitute. Arbinet is a firm that operates what is called a "spot market" for international communications service providers. That is, Arbinet acts as a broker that connects carriers with circuits to particular international points with other carriers that need to use such circuits to terminate their traffic and allows the carriers to shop for the lowest-cost circuits. The information that Arbinet collects concerns the use of those circuits made available through its market. While such information is quite useful for its purposes, the spot market represents only a small percentage of U.S. international traffic and does not represent all routes. Arbinet does not gather comprehensive information on the international telecommunications market.

44. The reports of multilateral organizations, while relevant for other necessary purposes, are not useful for the type of analysis that we must undertake to fulfill our responsibilities. Those reports rarely are based upon independent research but rely upon the Commission to provide data regarding U.S. telecommunications markets. We get the international data that we provide to these organizations from the traffic and revenue reports and circuit-status reports. Second, these reports are not available in a timely fashion.

45. We also find that we cannot replace the annual traffic and revenue report with *ad hoc* traffic and revenue information requests to the international service providers. If there were no ongoing information base, it would be extremely difficult for us to track the performance of international markets. With no requirement to file the information annually, many carriers likely would not continue to collect the information in a format useful to us. Those carriers that continued to collect this type of information likely would not collect it in the same type of format as other carriers. It is also questionable whether the carriers would be able to collect and submit the information upon a Commission request quickly enough to be useful in resolving a particular problem. It would, therefore, become more difficult for us to identify problems as they arise. It would also be more difficult for others to identify the existence of

[102] Telegeography is a company that provides information on various aspects of the international telecommunications industry. Telegeography publishes an annual report on international telecommunications traffic and revenues that it sells to subscribers. Arbinet is not in the business of publishing information. Arbinet does gather information on traffic handled through its exchange that is available to users of that exchange.

problems without ongoing public traffic and revenue data against which to compare the situation of a particular carrier to identify anomalies.

46. Reliance upon *ad hoc* information requests would also present problems in our analyses of proposed carrier transactions. We agree with the carriers that the parties to a proposed merger would likely voluntarily supply information on their traffic and revenues for each international route.[103] Assuming that the carriers would have specific route information, and that they can provide it to us in a timely fashion, this information would not be sufficient to analyze accurately the effect on competition of the proposed merger. The competitive effect of a merger requires us to know not just the information for the parties to the proposed merger but also information on the other carriers that serve the same routes. As explained above, an essential first step in evaluating any transaction is the calculation of the applicants' market shares in each international market in which the parties provide service. In order to calculate market shares, traffic and revenue data is needed from all market participants, not just the parties to the transaction. We would not be able to tell how competitive a route is, or how the merger might reduce competition, unless we have traffic and revenue information for all the carriers for that route.

47. We cannot be certain that other carriers would be willing to provide information if they are not parties to a proposed merger or that they would have information in a suitable format. Because they are not parties, it may be difficult to obtain relevant information from them for a merger analysis. Further, we may not be able to obtain the information in a timely enough fashion for our analysis. If all the carriers submit traffic and revenue information annually under section 43.61, we can be more certain we will have the information we need and on a timely basis. For these reasons, we conclude that reliance upon information submitted under an *ad hoc* information request is not an adequate substitute for the section 43.61 report.

F. Annual Circuit-Status Reports

48. We find that the information on international circuits continues to be essential for us to fulfill our mission and that there is no other source for this information. Therefore, we shall retain the requirement for facilities-based carriers to file international circuit data for each international route on which they provide service.[104] In the FNPRM, below, we propose to have non-common carriers also file data on their international circuits, so that we can have a more accurate assessment of the circuits available between the United States and international destinations. The commenters on the NPRM did not quantify the burden of filing the circuit-status report. The only information we have on this point is the estimate in a recent *ex parte* communication that it takes one large carrier 200 person hours to prepare its annual circuit-status report.[105] We do not have any information as to how much time it takes other entities to prepare their report. The elimination of the requirement to file separate information for offshore U.S. points that we adopt in this First Report and Order, as well as other changes to the report that we propose in the FNPRM, should reduce the burden on carriers of filing the circuit-status report. And, as we discuss below, there is no other source for the information contained in the circuit-status report. We therefore conclude that retaining this reporting obligation is justified.

49. The circuit-status reports provide us with the only information we have about the number of international circuits on U.S. international routes, the ownership of such circuits, whether the circuits

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[103] *See* Verizon April 20, 2005 *Ex Parte*.

[104] In the FNPRM, we seek comment whether to have facilities-based non-common-carriers as well as common-carriers report their international circuits. *See* Section IV.C2, paras. 128-134, *infra*.

[105] *See* n. 74, *supra*.

are in use or are idle, and how U.S. international filing entities use their circuits.[106] Although the commenters disagreed over the need for us to collect this information,[107] we find that we need such data to understand the international facilities market. We use this data to monitor the continuing transition of international routes to competition, to monitor compliance with Commission rules and policies, to gauge the effect of Commission decisions on competition in the international market and to develop policy positions for bilateral and multilateral negotiations and for Commission participation in international organizations. The circuit-status information is also used to ensure that carriers with market power do not use their access to circuit capacity to engage in any anti-competitive behavior. Additionally, we use the information in analyzing merger applications to determine whether a proposed merger might result in an anti-competitive concentration of market power in the international transport market.[108] Finally, the information is used to help monitor compliance with the international bearer circuit regulatory fees established in section 9 of the Communications Act.[109]

50. There are no other sources for this circuit data. We note that no commenter identified any other sources for the information provided by the circuit-status report. Further, for many of the reasons we identified in our discussion of the annual traffic and revenue report, we do not believe that reliance upon *ad hoc* information requests would be an adequate substitute for the information we obtain from the circuit-status report.[110]

G. Elimination of the Requirement to Report Separately Traffic for Off-Shore U.S. Points

51. We agree with the commenters that it no longer makes sense to report separately for off-shore U.S. points.[111] Therefore we will eliminate the requirement to report separately for off-shore U.S. points for the annual traffic and revenue reports and circuit-status reports. Elimination of such separate reporting will simplify the reporting requirements and greatly reduce the number of filings that the filing entities must submit, while continuing to provide us with the information we need.

52. In establishing the current section 43.61 reporting requirements for domestic and off-shore U.S. points in 1992, we recognized that international carrier issues less frequently center on the

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[106] NPRM, 19 FCC Rcd at 6482, ¶ 58.

[107] AT&T Comments at 11-13 (the circuit-status report continues to be useful, but should be expanded to include all circuits); MCI Comments at 8 (circuit-status reports are useful and should be retained); Sprint Comments at 2-3 (circuit-status does not seem crucial to assist the Commission); Verizon Comments at 2 (reports are not necessary in today's competitive marketplace).

[108] *See* AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, Memorandum Opinion and Order, FCC 06-189, 22 FCC Rcd 5662, 5741-42, ¶¶ 158-160 (2007) (*AT&T/BellSouth Merger Order*); *Verizon/MCI Merger Order,* 20 FCC Rcd at 18514-15, ¶¶ 157-160; *SBC/AT&T Merger Order,* 20 FCC Rcd at 18373, ¶ 158; Qwest Communications International Inc, and US West, Inc. *Memorandum Opinion and Order*, 15 FCC Rcd 5376, 5399-5400, ¶ 47 (2000).

[109] 47 U.S.C. § 159. Although we recently altered the basis for assessing fees for international submarine cable operators, the fees for common-carrier satellite, non-common-carrier satellite and common-carrier terrestrial facilities are still assessed based on the number of active circuits. *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2008, MD Docket No. 08-65, Second Report and Order, FCC 09-21, 24 FCC Rcd 4208 (2009) (*Subcable Reg Fee Order*).

[110] *See* paras. 47-48, *supra.*

[111] AT&T Comments at 4; MCI Comments at 2; Sprint Comments at 2; Verizon Comments at 9.

smallest markets and that reporting requirements should balance the need for market by market data with the potential burden on reporting carriers and exempt some points from complete reporting requirements.[112] In striving to reach such a balance, we distinguished between U.S. geographic markets with relatively large populations and those with relatively small populations.[113] We established reporting requirements in which facilities-based and facilities-resale carriers were required to file detailed data for each of six U.S. points, *i.e.,* the four domestic U.S. points (the conterminous United States, Alaska, Hawaii, Puerto Rico) and the two major off-shore U.S. points (Guam and the U.S. Virgin Islands). For each of these six U.S. points, carriers were required to file route-specific data, with the routes consisting of 218 foreign points, and the major and minor offshore U.S. points. Carriers were also required to file abbreviated reports for each of 11 minor offshore U.S. points, consisting of world-total data only. The current section 43.82 reporting requirements for domestic and offshore U.S. points parallel the section 43.61 requirements.[114]

53. In the NPRM, we proposed to eliminate the requirements that carriers file data for traffic or circuits between a U.S. domestic point and an off-shore U.S. point or between off-shore U.S. points.[115] We explained that off-shore U.S. points had gradually been integrated into the domestic U.S. pricing structure and that traffic between U.S. domestic points and off-shore U.S. points or between off-shore U.S. points is settled under domestic U.S., rather than international, settlement arrangements.[116] We also noted that customers of carriers that live within the off-shore U.S. points and have a complaint about the price or service offered by a carrier can file a complaint under the Communications Act.[117] We accordingly proposed that carriers no longer file as international traffic any traffic between a U.S. domestic point and an off-shore U.S. point or between off-shore U.S. points, observing that elimination of such reporting should simplify the information that the carriers must submit in their traffic and revenue reports. We noted that service between any of the off-shore U.S. points and a foreign point remains international in character and proposed to require carriers to continue to report such traffic.[118] Thus, in effect, we proposed eliminating offshore U.S. points as individual international routes in each of the reports for the six U.S. points and excluding data for off-shore points from world total data filed for the minor off-shore points.

54. Several commenters support the proposal to eliminate reporting requirements for traffic and circuits between domestic and off-shore U.S. points and between off-shore U.S. points, and no commenter opposes our proposal.[119] However, both Sprint and MCI argue that we should go further and

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[112] Manual for Filing International Traffic Statistics under Section 43.61 of the Commission's Rules, *Order*, 9 FCC Rcd 4965, ¶ 4 (CCB 1992) (*1992 43.61 Filing Manual Order*). *See also Section 43.61 Filing Manual* at 7-8, 12-13.

[113] The areas with large populations are the conterminous United States, Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands, and the areas with relatively small populations are the minor offshore points, consisting of American Samoa, the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Palmyra Atoll, and Wake Atoll. *See Section 43.61 Filing Manual* at 13.

[114] *See 1995 Circuit Status Order,* 10 FCC Rcd 8605. *See also Section 43.83 Filing Manual* at 7-8, 12-13.

[115] NPRM at 6472-73, 6483 ¶¶ 29-31, 59.

[116] NPRM at 6472.

[117] *Id.*

[118] *Id* at 6473, ¶ 31.

[119] AT&T Comments at 3; Cingular Comments at 7; MCI Comments at 2; Sprint Comments at 1-2; Verizon Comments at 9, 11.

eliminate disaggregate reports by U.S. points entirely.[120] Because we have not found disaggregate reporting by U.S. points to be of substantial benefit,[121] we cannot justify the additional burden that disaggregate reporting requirements impose on filing carriers. Consequently, we will eliminate all distinctions between domestic and off-shore U.S. points and require carriers to file a single traffic and revenue report aggregating traffic and revenue data for all U.S. points and a single circuit-status report aggregating circuit data for all for U.S. points.

55. We will therefore no longer require separate reporting for off-shore U.S. points. Carriers should combine the traffic and revenue data and circuit data for the off-shore U.S. points with the data for domestic U.S. points when filing. Carriers thus will only report traffic and revenue data and circuits status for calls and circuits between the "United States" and foreign points. We shall define the "United States" as the "several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone" – the definition in the Communications Act.[122] The International Bureau is directed to notify the filing entities of this change and the appropriate way to file combined data for domestic U.S. points and off-shore U.S. points in a public notice until such time that a revised Filing Manual can be adopted that incorporates this change.[123]

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

56. Although we are retaining the annual international traffic and revenue and circuit-status

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[120] Sprint Comments at 2 (separate reporting of traffic between each of the various offshore U.S. locations and foreign locations serves no discernible regulatory purpose and is burdensome for U.S. carriers to compile); MCI Comments at 2-3 (U.S. carriers should be required to file section 43.61 and 43.82 information on an aggregated basis for all U.S. points, whether such points are continental or offshore).

[121] In evaluating the benefit of continued separate reports for individual U.S. points, we rely on almost 30 years of experience in using sections 43.62 and 43.82 data. During this time, we have gained considerable experience in using the data to calculate market shares, analyze mergers, identify compliance with our benchmarks policy, evaluate trends in settlement rates; identify the impact of circuit blockages (anticompetitive behavior by foreign carriers), and monitor U.S. international calling rates. Although individual U.S. points may be separate geographic markets under the DOJ/FTC Horizontal Merger Guidelines, U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, August 19, 2010, available at http://www.justice.gov/atr/public/guidelines/hmg-2010.html, and data filed by U.S. point should theoretically be useful for merger analysis, we have not found the data to be of actual benefit in merger analyses that we have conducted. In our merger analyses, we have analyzed route-specific IMTS and international private-line markets on an aggregate U.S. basis. *See, e.g., Verizon/MCI Merger Order*, 20 FCC Rcd at 18517-19, ¶¶ 163-169. We have not found the competitive conditions of supply, *e.g.,* entry conditions, to be sufficiently different among the U.S. points to justify analyzing them separately. In examining foreign routes for compliance with benchmarks, we have also used aggregate U.S. data because our benchmarks policy applies uniformly to all traffic settled between a particular foreign point and the United States and is not restricted to particular U.S. points. Also, we examine settlement rates based on aggregate U.S. data rather than by U.S. point because settlement rates paid by U.S. carriers depend primarily on the foreign point with which traffic is exchanged, not the U.S. point. Similarly, we analyze the effects of circuit blockages, in which foreign carriers with market power block U.S. traffic, with respect to the United States as a whole, because such blockages apply equally to all U.S. points. Finally, we monitor international calling rates on an aggregate U.S. basis, because there appear to be no significant trend differences between U.S. points.

[122] 47 U.S.C. § 153(58).

[123] Verizon states that it may need time to implement system changes to eliminate the inclusion of traffic and revenue for calls between the conterminous United States and U.S. off-shore points and between U.S. off-shore points. Verizon Comments at 12. To the extent that a carrier is unable to implement the required changes in a timely fashion, it may file a request for a waiver to continue reporting under the old requirements for U.S. points for one year.

reports, we continue to believe that those reporting requirements can and should be modernized and streamlined. In the NPRM, we made a number of proposals for changes to the reporting requirements and in the Staff Recommendations in the NPRM several more possible changes were discussed. Since those proposals were made, we have received formal comments in this proceeding, held meetings with the carriers, and received written *ex parte* comments. Based on that input and our further evaluation of the reporting requirements and the type of information that we need, we have altered and refined many of those proposals. We seek comment on these revised proposals, and seek to refresh the record on some of the proposals previously discussed in the NPRM since the comments on those proposed were filed almost seven years ago. As discussed below, we believe that these changes would make the information gathered by the reports more useful to our statutory responsibilities and ask for comments on these proposals. We have also identified entities that provide international communications services but do not currently file traffic and revenue or circuit-status reports. We seek comment whether the public interest requires that we obtain information from these entities. We seek additional comment on the proposals discussed below.

A. Consolidation of Traffic and Revenue Report and Circuit-Status Report

1. Single Rule: New Section 43.62

57. We propose to consolidate the annual traffic and revenue reporting requirements currently in section 43.61 and the circuit-status reporting requirements currently in section 43.82 into one rule – section 43.62. In the NPRM, we said that having one consolidated rule would make the reporting requirements more uniform and facilitate compliance with them.[124] No commenter specifically addressed this issue. We seek comment on this proposal.

2. Consolidated Filing Date

58. We propose that there should be a single filing date for the annual traffic and revenue report and the circuit-status report – May 1 – once the reporting requirements are streamlined. Currently section 43.82 requires carriers to file their circuit-status reports by March 31.[125] Section 43.61 requires that the annual traffic and revenue reports be filed by July 31, and requires a carrier to file a revision by October 31 correcting any inaccuracies in its original report that exceed 5 percent of the reported figure.[126] In the NPRM, we proposed to have both the annual traffic and revenue report and the circuit-status report filed on the same date – May 1.[127] The proposed May 1 filing date for both reports would give filing entities more time to prepare their circuit-status filings (from March 31 to May 1) but less time to prepare their traffic and revenue filings (from July 31 to May 1) and would require them to work on both filings simultaneously.[128] We noted that proposed simplifications of the traffic and revenue requirements should allow the carriers to file that data earlier than they do now.[129] With the elimination of the quarterly reporting requirements as well as the significant reductions that we are proposing in the

[124] NPRM, 19 FCC Rcd at 6484, ¶¶ 62-63.

[125] 47 C.F.R. § 43.82(a).

[126] 47 C.F.R. § 43.61(a).

[127] NPRM, 19 FCC Rcd at 6477-78, ¶¶ 46-49, 6484, ¶ 64.

[128] Moving the filing date for the circuit-status report to May 1 will allow the filing entities more time between the circuit-status filing and the April 1 filing date for the filing entities' Form 499 information. This should assist the carrier's compliance in making both filings.

[129] NPRM, 19 FCC Rcd at 6477-78, ¶¶ 46-47, 49.

amount and complexity of the information that must be filed, we anticipate that filing entities would be able to file complete and accurate reports by the May 1 deadline.[130] We note that no commenter raised concerns with filing the data by May 1.

59. Similarly, we do not believe that this change in the reporting date should have a significant impact on the staff's preparation and release of the public reports. The circuit-status data filings would be delayed by approximately one month. Nonetheless, we believe that this delay is minor and should not adversely affect the timeliness of the data or the staff's ability to prepare the circuit-status report in a timely fashion. The earlier filing date for the traffic and revenue data should help Commission staff in publishing the International Telecommunications Data report more rapidly, thus enhancing the timeliness of the data in the report.

60. As part of our proposed shift to a single filing date, we also propose to eliminate specifying a particular date for filing revisions to the annual traffic and revenue data.[131] If a filing entity becomes aware of an error that is equal to or greater than one percentage point of the statistic that it filed, it would be required to file a correction when it becomes aware of the error. The requirement to file a correction would not just apply to the most recent filing, but a filing entity would be required to correct any previous filing if it becomes aware of an error that is equal to or greater than one percentage point of the statistic that it filed. We seek comment on this proposal to have a single filing date, of May 1, for the annual traffic and revenue report and circuit-status report. We also seek comment on our proposal for correcting errors and filing revisions.

3. Consolidated Filing Manual

61. We propose to create a single filing manual with instructions for filing both the annual traffic and revenue report and the circuit-status report. As we noted in the NPRM, the two reports now have separate filing manuals that contain different definitions and require the carriers to follow different formats.[132] We agree with Verizon that consolidation of the manuals would give us an opportunity to create consistent formats for the traffic and revenue report and the circuit-status report.[133] We also agree with SES Americom/PanAmSat that the manuals need to be updated to reflect current telecommunications markets and services.[134] We believe that a consolidated filing manual should be more user friendly than separate filing manuals, would provide consistent definitions and would ensure that services are reported in a more uniform manner. We seek comment on this proposal.

62. The International Bureau will be seeking comment on a proposed Consolidated Filing Manual to be used in the event that we decide in this proceeding to consolidate the annual traffic and revenue and circuit-status reports. This draft Filing Manual is based on the changes to the reporting requirements discussed in this FNPRM and shows how carriers would file if these changes are adopted. Interested parties may include their comments on the proposed Filing Manual with their comments on this FNPRM. We direct the International Bureau to revise the draft Filing Manual and issue a new Filing Manual based on the revised reporting requirements that we adopt in this proceeding, and the comments

[130] Failure to file the required data on time is a violation of Commission rules and could result in fines and forfeitures. *See* 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

[131] Section 43.61(a)(2) states that any revisions should be filed by October 31. 47 C.F.R. § 43.61(a)(2).

[132] NPRM, 19 FCC Rcd at 6484, ¶ 65.

[133] Verizon Comments at 11.

[134] SES Americom/PanAmSat Comments at 3.

filed in response to the proposed Filing Manual. In the meantime, filing entities should continue to file their annual traffic and revenue and circuit-status reports pursuant to the current Section 43.61 Filing Manual and Section 43.82 Filing Manual, as clarified by relevant Public Notices.[135]

B. Proposed Changes to the Reporting Requirements

63. We propose a number of changes to the international reporting requirements. We propose to divide a new section 43.62 into three reports: (1) the Services Report, (2) the Traffic and Revenue Report, and (3) the Circuit-status Report. All filing entities would be required to file a Services Report providing basic information about themselves and the international services they provided in the previous year. As we explain below, for numerous filing entities, this is all that they would be required to file. Certain filing entities would be required to file a Traffic and Revenue Report. Filing entities which owned international facilities would be required to file a Circuit-status Report. The Traffic and Revenue Report would consist of four schedules and the Circuit-status Report would consist of one schedule. (The proposed Services Report and schedules for the Traffic and Revenue Report and Circuit-status Report are in Appendix E.) These proposed schedules incorporate a number of changes to the reports to streamline and modernize the reporting requirements. We discuss these proposed changes below and seek comment on them.

1. Services Report

64. We propose to require all filing entities to file an annual Services Report. In the NPRM, we proposed such a report.[136] The Commission noted that if it adopted a revenue threshold for reporting IMTS resale traffic and revenues, there would be a large number of carriers that would be providing service that would not be filing traffic and revenue reports.[137] We stated that the filing of a report with information about the carrier – such as address, phone number, email address, and the international section 214 authorizations held by the carrier – would assist us in keeping track of who is offering international service and how to contact them.[138] The report would also direct the carrier as to which, if any, of the other schedules it needed to complete.[139] No commenter opposed this proposal.[140]

65. We continue to believe that a Services Report would provide important information to us and would not be burdensome, as it would require a respondent simply to state whether or not it provided international service or owned or leased any international circuits during the previous year, verify its authorizations and update its contact information.[141] This information would improve the accuracy of our

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[135] The current Section 43.61 Filing Manual and the Public Notices which have clarified the reporting requirements are available at http://www.fcc.gov/wcb/iatd/intl.html. The current Section 43.82 Filing Manual is available at http://www.fcc.gov/ib/pd/pf/csmanual.html.

[136] NPRM, 19 FCC Rcd at 6474-75, ¶¶ 36-37; Appendix C, *id.* at 6509, ¶ 11.

[137] *Id.* at 6474, ¶ 36.

[138] *Id.*

[139] The "Summary Report" was schedule 1 in the Staff Recommendations. *See* NPRM, Appendix C, 19 FCC Rcd at 6509-10, ¶¶ 11-13, 6520.

[140] Sprint stated that requiring all carriers to file the services checklist would be helpful and would impose a minimal burden on reporting carriers. Sprint Comments at 4-5.

[141] Sprint suggests that carriers not be required to file the same list of international section 214 authorizations year after year, and instead file an initial list and then just file annual updates. Sprint Comments at 4. We believe that once a carrier compiles a complete list of its international section 214 authorizations it would not be any more burdensome to file a complete list each year rather than filing updates, as suggested by Sprint. Once a carrier (continued….)

database and help us administer scarce numbering resources such as the international signaling point code used with Signaling System 7 telephone switches.[142]

66. The Services Report would be completed by all filing entities.[143] The Services Report would consist of two parts: (1) a Registration Form and (2) a Services Checklist. The Registration Form would seek basic information about a filing entity's filing and about the entity itself.[144] The Services Checklist would contain a series of boxes that filing entities would check to provide some basic information about their operations, if any, during the previous year.[145]

67. We seek comment on our proposal to require all filing entities file a Services Report. We also seek comment on what information regarding the filing entity should be included in the Services Report.

2. Changes to the Annual Traffic and Revenue Report

68. As discussed above, we find that we continue to need annual international traffic and revenue data.[146] We believe, however, the reporting requirements need to be modernized and streamlined to provide us with the exact information that we need. We propose a number of changes to the annual traffic and revenue reporting requirements to eliminate the filing of unneeded information and, in certain limited circumstances, to require the filing of additional useful information. We seek comment on these proposals.

(Continued from previous page)
compiles a complete list of its international section 214 authorizations it may want to surrender duplicate or otherwise unnecessary authorizations.

[142] Because there are only a limited number of such codes available for use in the United States, we have made our assignments conditional and required carriers to surrender the codes if they have not put them into use within one year of the grant or have ceased to use them.

[143] Filing entities would be (1) all persons or entities that hold an international section 214 authorization, whether or not they provided international service in the reporting period, (2) interconnected VoIP providers that provided international service in the reporting period, and (3) any person or entity that owned international facilities as of December 31 of the reporting period.

[144] The filing entity would be required to update its contact information, including its FCC Registration Number. For example, the form would require a filing entity to update the name and address of the company, the name and address of a company official that can certify the completeness and accuracy of the filed information, and the name and address of the entity's attorney of record. Finally, the Registration Form would require holders of authorizations under Section 214 of the Communications Act to provide and annually update a list of all their Section 214 authorizations. Filing entities that do not hold international section 214 authorizations – those providing only interconnected VoIP services or only having non-common-carrier circuits – would not need to answer this question.

[145] In filling out the Services Checklist, a filing entity would first check a box to indicate whether it provided service during the preceding year. If the entity did not provide any service, it would not need to provide any additional information. The Services Checklist would require a filing entity that did provide service to check off one or more boxes relating to specific services it provided during the previous year. For example, a filing entity would check a box if it provided U.S.-billed or foreign-billed IMTS, international private-line service, or international miscellaneous service. If the entity checked such a box, the Services Checklist would direct the entity to file an appropriate schedule or schedules covering that service. Under our proposal to exempt filing entities with less than $5 million in IMTS resale revenue from filing traffic and revenue information, *see* paras. 96-99, *supra*, if the filing entity only provided IMTS resale service and was below the threshold, it would not have to file any schedule and filling out the Services Report would complete its filing.

[146] *See* Section III.E, paras. 28-46, *supra.*

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.[147] 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.[148] We agree with AT&T that, with the changes in the international markets and particularly the removal of the ISP from most routes,[149] most traffic will be settled under commercial arrangements rather than traditional methods.[150] 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.[151] Commenters generally supported the proposal to use filing schedules in place of the current billing codes.[152]

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.[153] 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.[154] Each of these

[147] NPRM Appendix C, 19 FCC Rcd at 6508-35.

[148] *Id.* at 6511, ¶¶ 19-20.

[149] *See 2004 ISP Reform Order,* 19 FCC Rcd 5709; *see also 2011 ISP Reform NPRM.*

[150] AT&T Comments at 9. *See also* Sprint Reply Comments at 2.

[151] NRPM Appendix C, 19 FCC Rcd at 6508, ¶ 7.

[152] Verizon Comments at 9-10.

[153] 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."[153] 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.

[154] *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.[155] 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.[156] As a result, we found no need to continue to require filing entities to report this information.[157] Commenters generally supported the proposal on this point.[158] 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.[159] The commenters supported this proposal.[160] 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.[161] In response to those

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[155] NPRM, 19 FCC Rcd at 6472, ¶ 28.

[156] *Id.*

[157] *Id.*

[158] MCI Comments at 2; Verizon Comments at 8.

[159] NPRM, Appendix C, 19 FCC Rcd at 6510, 6512, 6514-16, ¶¶ 15, 23, 33, 40.

[160] Verizon Comments at 10.

[161] *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,[162] we initiated a Notice of Inquiry to examine foreign mobile termination rates[163] and possible adverse effects those rates may have on U.S. users.[164] In that proceeding, we noted that information on foreign mobile settlements rates is generally not publicly available.[165]

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.[166] Commenters opposed this additional information collection, arguing that it imposed a significant new burden.[167]

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

[162] *See* 19 FCC Rcd at 5790, ¶ 90.

[163] 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.

[164] *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*).

[165] 19 FCC Rcd at 21405, ¶ 19.

[166] NPRM, 19 FCC Rcd at 6510, Appendix C, ¶ 16.

[167] *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.[168] 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.[169] 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).[170] 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

[168] 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.

[169] 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.

[170] 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.[171] 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.[172] 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[173] statistics to monitor and evaluate the IMTS rate levels paid by U.S. consumers.[174] 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."[175] 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.[176] 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.[177] 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

[171] 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.

[172] *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.

[173] 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.

[174] 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.

[175] 47 U.S.C. § 151.

[176] 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.

[177] 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.[178] Commenters opposed this approach.[179] 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.[180] 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

[178] NPRM, Appendix C, 18 FCC Rcd at 6511, ¶ 18.

[179] *See, e.g.,* AT&T Comments at 6; MCI Comments at 5.

[180] 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 is it 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 Reorginated 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.[181] 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.[182] 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.

[181] *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.

[182] 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.[183]

97. In the NPRM, we sought comment whether to establish a $5 million revenue threshold for reporting IMTS resale traffic and revenues.[184] 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.[185] 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.[186] 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.[187] 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.[188] Based on the 2009 data,

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[183] *Section 43.61 Filing Manual*, Section 3, pp. 38-45.

[184] NRPM, 19 FCC Rcd at 6473-74, ¶¶ 32-35.

[185] Cingular Comments at 7-8; Verizon Wireless Reply Comments at 3-4.

[186] 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*.

[187] *Id*.

[188] *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.[189] 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.[190] 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.[191] 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.[192] 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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[189] NPRM, Appendix C, 19 FCC Rcd at 6512, ¶¶ 25-26.

[190] 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.

[191] 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.

[192] 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.[193] 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.[194] This would have required that data services be reported on a route-specific basis.[195] Consequently, we do not propose to adopt our initial proposal to require filing entities report data services on a regional total basis.[196] 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.[197] 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. [198] Further, we propose to streamline

[193] *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.

[194] NPRM, Appendix C, 19 FCC Rcd at 6514-15, ¶¶ 35-36.

[195] *Id.*

[196] *Id.* at 6515-16, ¶¶ 39-40.

[197] 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.

[198] 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.[199] 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.[200] 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.[201]

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.[202] 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 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.[203] We also propose

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[199] 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.

[200] 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).

[201] 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.*

[202] NPRM, 19 FCC Rcd at 6476, ¶ 42.

[203] *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.[204] 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.[205] We agree with AT&T's comments that such information is no longer needed.[206] 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.[207] 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.[208] 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.[209] This requirement was added at a time when carriers used equipment referred to as circuit multiplication equipment that allowed them to carry more

(Continued from previous page)
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).

[204] *See* Section III.F, para. 47-49, *supra.*

[205] 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.

[206] AT&T Comments at 11-12.

[207] NPRM Appendix C, 19 FCC Rcd at 6516, ¶ 43.

[208] NPRM Appendix C, 19 FCC Rcd at 6516, ¶ 43.

[209] Section 43.82 Filing Manual at 14-16.

simultaneous IMTS calls than the number of voice-grade bearer circuits in use.[210] 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.[211] Commenters generally supported replacing the 64 kbps equivalent unit.[212] Although we acknowledge that most transmission facilities have very large capacities that are significantly higher that 64 kbps,[213] 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[214] to submit data regarding their provision of international telephone services under our proposed streamlined reporting rules.[215] 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?[216] International voice traffic generated by interconnected VoIP service appears to constitute a

[210] 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.

[211] NPRM Appendix C, 19 FCC Rcd at 6516, ¶ 42.

[212] Verizon Comments at 6-7.

[213] MCI Comments at 9; *see also* Verizon Reply Comments at 6.

[214] 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.

[215] 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.

[216] 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.[217] Commission data show that end users are increasingly obtaining service from interconnected VoIP providers, such as cable companies.[218]

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.[219] 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.[220] In 2006, we began requiring interconnected VoIP service providers to contribute to the universal service fund because they are providers of interstate telecommunications.[221] Since 2008, interconnected VoIP service providers have been required to report subscribership information on FCC

(Continued from previous page)
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.

[217] *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).

[218] 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).

[219] *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).

[220] 47 C.F.R. § 9.5(b).

[221] *See 2006 Universal Service Order,* 21 FCC Rcd 7518.

Form 477.[222]

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.[223] Thus the use of IP-based services such as interconnected VoIP to make international phone calls has been increasing.[224] Indeed, VoIP calls are increasing at a faster rate than traditional IMTS calls,[225] 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.[226] After a slight rebound in 2008, reported IMTS traffic declined further in 2009,[227] and carriers cited competition from VoIP providers as a major influence on the decrease in reported IMTS traffic.[228]

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

[222] *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 Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, 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 Subscribership*); *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership,* 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.

[223] *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.

[224] 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.

[225] 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. Telegeography stated that international VoIP traffic accounted for 16% of world-wide international traffic in 2005. Telegeography 2006 at 43. S*ee 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).

[226] *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.").

[227] *See* 2009 International Telecommunications Data, at 1.

[228] 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.[229] Section 2 of the Act grants the Commission jurisdiction over "all interstate and *foreign communication* by wire or radio."[230] Moreover, the Commission has a statutory obligation, among other things, to make available world-wide communication service with adequate facilities at reasonable charges.[231] 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.[232] Section 201(a) of the Act makes clear that the services subject to our section 201(b) obligation include international services.[233] 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,[234] 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."[235]

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.[236] Our

[229] *See* 47 U.S.C. §§ 151, 211, 218, 219, 220.

[230] *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).

[231] 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.

[232] 47 U.S.C. § 201(b).

[233] 47 U.S.C. § 201(a) ("... interstate *and foreign* services ...") (*emphasis added*).

[234] 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).

[235] 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").

[236] *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.[237] 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[238] 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."[239] 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."[240] 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.[241] Section 706 of the Telecommunications Act of 1996,[242] 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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[237] *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).

[238] 47 C.F.R. §§ 151, 152, 201, 202, 211, 219, 220.

[239] 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).

[240] 600 F.3d 642, 659 (D.C. Cir. 2010).

[241] *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/.

[242] 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.[243] 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.[244] 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.[245] 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.[246] 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.[247] 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.[248] 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

[243] 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.

[244] *See* notes 221 and 222, *supra*, citing worldwide estimates of international VoIP traffic growth.

[245] *See* Pub. Law No. 8 67th 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.

[246] *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*).

[247] Pub. Law No. 8 § 2.

[248] 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,[249] 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.[250] We sought comment in the NPRM on whether non-common carriers should report their international circuits.[251] The commenters opposed extending the reporting requirements to include non-common carrier circuits, questioning why we needed such information.[252] 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,[253] and we have made changes to the proposed reporting requirements for international circuits.[254] Accordingly, we seek further comment on extending streamlined reporting requirements to international non-common carrier circuits.[255]

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.[256] 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.[257] We

[249] 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).

[250] 47 C.F.R. § 43.82(a).

[251] NPRM, 19 FCC Rcd at 6483, ¶ 60.

[252] *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.

[253] *See Subcable Reg Fee Order,* 24 FCC Rcd 4208.

[254] *See* Section IV.B.3, paras. 110-14, *supra.*

[255] 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.

[256] NPRM, 19 FCC Rcd at 6483, ¶ 60.

[257] 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.[258] 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).[259] 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.[260] 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.[261] 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,[262] we license companies to own and operate submarine cables and associated cable

[258] *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).

[259] *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).

[260] 2009 Section 43.82 Circuit Status Data (rel. Dec. 2010), Table 7-A.

[261] 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.

[262] *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,[263] 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,[264] 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."[265] 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.[266] 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.[267] 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.[268] We also noted that we have accorded confidentiality to circuit-status information filed

[263] *Id.*

[264] *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).

[265] *Comcast,* 600 F.3d at 646, *quoting American Library Ass'n v. FCC*, 406 F.3d at 691-92.

[266] "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).

[267] *Assessment and Collection of Regulatory Fees for 1997*, 12 FCC Rcd at 17188, ¶ 68.

[268] 19 FCC Rcd at 6485, ¶ 68.

under section 43.82.[269] 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.[270] 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.[271] 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.[272] In requesting comment on these issues, we recognized that carriers may seek confidential treatment for information submitted under section 0.459 of the rules.[273]

133. Four parties commented on the issue of confidential treatment of data.[274] 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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[269] 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.

[270] 19 FCC Rcd at 6485, ¶ 68.

[271] *Id*.

[272] *Id.* at ¶ 71.

[273] 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).

[274] 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[275] 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.[276] 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.[277] 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.[278] An application for review of the Bureau action is pending Commission action.[279]

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 indentified as "not routinely available to the public under our rules."[280] 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

[275] *See* 2004 International Telecommunications Data Report, Table 5.

[276] *See* 2003 Section 43.82 Circuit Status Data report, Table 1; 2009 Section 43.82 Circuit Status Data report, Table 1.

[277] 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.

[278] *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.

[279] *See* Letter from Douglas Orvis II, Counsel for IDT Telecom, Inc., to Marlene H. Dortch, Secretary, FCC (dated May 14, 2010).

[280] 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.[281] 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.[282] 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

[281] *See* 47 C.F.R. 0.457-0.462.

[282] *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.[283] 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

[283] *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.[284] 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.[285] 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.[286] 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,[287] 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.[288]

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[284] *See* Section III, paras. 18-27, 50-54, *supra.*

[285] 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).

[286] 47 C.F.R. § 1.1206(b)(2).

[287] *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).

[288] 5 U.S.C. § 603(a).

C. Initial Regulatory Flexibility Analysis for Further Notice of Proposed Rulemaking

146. Pursuant to the Regulatory Flexibility Act (RFA),[289] we have prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and actions considered in the Further Notice of Proposed Rulemaking. The text of the IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.[290]

D. Paperwork Reduction Act of 1995 Analysis

1. First Report and Order

147. This *First Report and Order* adopts new or revised information collection requirements, subject to the Paperwork Reduction Act of 1995 ("PRA").[291] These information collection requirements will be submitted to the Office of Management and Budget ("OMB") for review under Section 3507(d) of the PRA. The Commission will publish a separate notice in the Federal Register inviting comment on the new or revised information collection requirement(s) adopted in this document. The requirement(s) will not go into effect until OMB has approved it and the Commission has published a notice announcing the effective date of the information collection requirement(s). In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[292]

2. Further Notice of Proposed Rulemaking

148. The Further Notice of Proposed Rulemaking portion of this First Report and Order and Further notice of Proposed Rulemaking contains proposed new or modified information collection requirements. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees."

E. Congressional Review Act

149. The Commission will send a copy of this First Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5

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[289] *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).

[290] 5 U.S.C. § 603(a).

[291] The Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in 44 U.S.C. §§ 3501-3520).

[292] *Rural NPRM*, 24 FCC Rcd at 5261; 74 Fed. Reg. 22498, 22505 (May 13, 2009).

U.S.C. § 801(a)(1)(A).

F. Comment Filing Procedures

150. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *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://fjallfoss.fcc.gov/ecfs2/ or the Federal eRulemaking Portal: http://www.regulations.gov.

- Paper Filers: Parties who choose to file by paper must file an original and four copies 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.

151. Filings can be sent by hand or messenger delivery, 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.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

152. 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).

153. All parties must file one copy of each pleading electronically or by paper to each of the following:

(1) The Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

(2) James Ball, Chief, Policy Division, International Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail: James.Ball@fcc.gov.

(3) David Krech, Associate Chief, Policy Division, International Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail: David.Krech@fcc.gov.

(4) John F. Copes, Attorney, Policy Division, International Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail John.Copes@ fcc.gov.

(5) Sean O'More, Attorney, Policy Division, International Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail Sean.O'More@ fcc.gov.

(6) Mark Uretsky, Economist, Policy Division, International Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail Mark.Uretsky@ fcc.gov

154. Filings and comments will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com. They will also be accessible through the Commission's Electronic Filing System (ECFS) on the Commission's website, www.fcc.gov.

155. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules.[293] All parties are encouraged to utilize a table of contents, to include the name of the filing party and the date of the filing on each page of their comments' length of their submission. We also strongly encourage that parties track the organization set forth in the Further Notice of Proposed Rulemaking in order to facilitate our internal review process.

156. Written comments by the public on the proposed and/or modified information collections are due 60 days from the date of publication of the Notice in the Federal Register. Written comments must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on the proposed and/or modified information collections on or before 60 days after the date of publication in the Federal Register of the Notice. In addition to filing comments with the Secretary, Marlene H. Dortch, a copy of any comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to Judith.BHerrman@fcc.gov. and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to Kim_A._Johnson@omb.eop.gov.

157. Commenters that file what they consider to be proprietary information may request confidential treatment pursuant to section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. *See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816 (1998), Order on Reconsideration, 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. *See* 47 C.F.R.§ 0.461; 5 U.S.C. § 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds

[293] 47 C.F.R. § 1.49.

that falls within the scope of a FOIA exemption.

VII. ORDERING CLAUSES

158. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i)-4(j), 11, 201-205, 211, 214, 219, 220, 303(r), 309 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-154(j), 161, 201-205, 211, 214, 219-220, 303(r), 309, 403, the policies, rules and requirements discussed in this Report and Order ARE ADOPTED and Parts 43 and 63 of the Commission's rules, 47 C.F.R. Parts 43 and 63 ARE AMENDED as set forth in Appendix C.

159. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j) 11, 201-205, 211, 214, 219, 220, 303(r), 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 161, 201-205, 211, 214, 219, 220, 303(r), 309 and 403, and the Cable Landing License Act of 1921, 47 U.S.C. §§ 35-39, this Further Notice of Proposed Rulemaking IS HEREBY ADOPTED and COMMENTS ARE REQUESTED as described above.

160. IT IS FURTHER ORDERED that the Motion for Leave to File Reply Comments One Day Late filed by Kelley Drye & Warren LLP IS GRANTED.

161. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq*.

162. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this First Report and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

163. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, as amended (RFA),[1] the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM) in this proceeding.[2] The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) addresses the policies and rules that the Commission adopted in the First Report and Order (FR&O) portion of the decision in this proceeding. This FR&O retains the annual traffic and revenue report and the annual circuit-status report. The FR&O adopts some measures, as described below, to simplify compliance with the reporting requirements but generally does not alter either report. The commission will consider a number of proposals to streamline the reports and to improve the information that carriers will provide in the Further Notice of Proposed Rulemaking portion of this proceeding. This FRFA conforms to the RFA.

A. Need for, and Objectives of, the First Report and Order

1. The Commission initiated this comprehensive review of the reporting requirements imposed on U.S. carriers providing international telecommunications services under sections 43.51, 43.61, 43.82, and 63.23(e) of the Commission's rules, to modernize and simplify those requirements. The Commission believes that the policies and rules adopted in the FR&O will improve the data filing entities report while making it easier for carriers, both small and large, to provide the information required by the rules.

2. In the FR&O, the Commission concluded that it continues to need the traffic and revenue information the carriers now file under section 43.61(a) of the rules and the circuit information the carriers file under section 43.82 of the rules. The Commission further concluded in the FR&O that it no longer needs the information provided by the large carrier quarterly reports required by section 43.61(b), the foreign carrier affiliate quarterly report required by section 43.61(c), the circuit-addition report required in section 63.23(e), or the telegraph division-of-tolls report.

3. Currently, section 43.61 requires that all international telecommunications carriers file an annual report of their traffic and revenues. Under section 43.82, facilities-based common carriers providing international telecommunications services must file an annual report on the status of their circuits. The information derived from the international revenue and traffic report and circuit-status report is critical in understanding the international telecommunications market. These reports are the only source of publicly available information of this nature.

4. The information obtained from the traffic and revenue and circuit-status reports is used extensively by the Commission, the industry, other government agencies, and the public. The Commission uses the information to evaluate applications for international facilities, track market

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules,* IB Docket No. 04-112, Notice of Proposed Rulemaking, 19 FCC Rcd 6460 (2004). We note that we may certify this proceeding under 5 U.S.C. § 605, because our action will not have a significant economic effect on a substantial number of small entities (as discussed).

developments and the competitiveness of each service and geographical market to formulate rules and policies consistent with the public interest, monitor compliance with those rules and policies, and guard the competitive effect of its decisions on the market. Carriers use the information to track the balance of payments in international communications services and for market analysis purposes. Carriers and potential entrants use the information for, among other things, assessment of market opportunities and to monitor competition in markets. The Commission, along with other government agencies such as the Department of Justice and the United States Trade Representative, use the information in merger analyses and negotiations with foreign countries, respectively. In addition, the information contained in the circuit- status report allows the Commission to comply with the statutory requirements of the Omnibus Budget Reconciliation Act of 1993.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. No comments specifically addressed the IRFA

C. Description and Estimate of the Number of Small entities to Which the Rules will Apply

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[3] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[6]

7. The policies adopted in the FR&O apply to entities providing international common carrier services pursuant to section 214 of the Communications Act; entities providing international wireless common carrier services under section 309 of the Act; entities providing common carrier satellite services under section 309 of the Act; and entities licensed to construct and operate submarine cables under the Cable Landing License Act. The Commission has not developed a small business size standard directed specifically toward these entities. As described below, such entities fit within larger categories for which the SBA has developed size standards

1. Traffic and Revenue Report

8. The FR&O decided to retain the annual traffic and revenue report, which common carriers providing international telecommunications services are now required to file. Such entities include entities providing international common carrier services pursuant to section 214 of the Communications Act and entities providing domestic or international wireless common carrier services under section 309 of the Act. The carriers that the FR&O will require to continue to file the traffic and

[3] 5 U.S.C. § 603(b)(3).

[4] 5 U.S.C. § 601(6).

[5] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[6] 15 U.S.C. § 632.

revenue report are a mixture of both large and small entities. The Commission has not developed a small business size standard directed specifically toward these entities. However, as described below, these entities fit into larger categories for which the SBA has developed size standards that provide these facilities or services.

9. **Facilities-based Carriers**. Facilities-based providers of international telecommunications services would fall into the larger category of interexchange carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[7] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.[8] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[9] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[10] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

10. In the 2009 annual traffic and revenue report, 38 facilities-based and facilities-resale carriers reported approximately $5.8 billion in revenues from international message telephone service (IMTS). Of these, three reported IMTS revenues of more than $1 billion, eight reported IMTS revenues of more than $100 million, 10 reported IMTS revenues of more than $50 million, 20 reported IMTS revenues of more than $10 million, 25 reported IMTS revenues of more than $5 million, and 30 reported IMTS revenues of more than $1 million. Based solely on their IMTS revenues the majority of these carriers would be considered non-small entities under the SBA definition.[11]

11. The 2009 traffic and revenue report also shows that 45 facilities-based and facilities-resale carriers (including 14 who also reported IMTS revenues) reported $683 million for international private line services; of which four reported private line revenues of more than $50 million, 12 reported private line revenues of more than $10 million, 30 reported revenues of more than $1 million, 34 reported private line revenues of more than $500,000; 41 reported revenues of more than $100,000, while 2 reported revenues of less than $10,000.

12. The 2009 traffic and revenue report also shows that seven carriers (including one that reported both IMTS and private line revenues, one that reported IMTS revenues and three that reported private line revenues) reported $51 million for international miscellaneous services, of which two reported miscellaneous services revenues of more than $1 million, one reported revenues of more than

[7] 13 C.F.R. § 121.201, NAICS code 517110.

[8] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

[9] *See Trends in Telephone Service* at Table 5.3.

[10] *See id*.

[11] *See* 13 C.F.R. § 121.201, NAICS Code at Subsector 517 – Telecommunications.

$500,000, two reported revenues of more than $200,000, one reported revenues of more than $50,000, while one reported revenues of less than $20,000. Based on its miscellaneous services revenue, this one carrier with revenues of less than $20,000 would be considered a small business under the SBA definition. Based on their private line revenues, most of these entities would be considered non-small entities under the SBA definition.

13. **IMTS Resale Carriers**. Providers of IMTS resale services are common carriers that purchase IMTS from other carriers and resell it to their own customers. The SBA has developed a small business size standard for the category of "Telecommunications Resellers." Under that size standard, such a business is small if it has 1,500 or fewer employees.[12] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[13] Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. In the 2009 traffic and revenue report, 1,232 carriers reported that they provided IMTS on a pure resale basis.[14] Based on their IMTS resale revenues, IMTS resale service is primarily provided by carriers that would be considered small businesses under the SBA definition. For example, of the 1,232 IMTS resale carriers, 644 carriers reported revenues of less than $10,000; 1,025 had revenues less than $500,000; and 1,068 had revenues less than $1 million.[15] Consequently, the Commission estimates that the majority of IMTS resellers are small entities that may be affected by our action.

14. **Wireless Carriers and Service Providers**. Included among the providers of IMTS resale are a number of wireless carriers that also provide wireless telephony services domestically. The Commission classifies these entities as providers of Commercial Mobile Radio Services (CMRS). At present, most, if not all, providers of CMRS that offer IMTS provide such service by purchasing IMTS from other carriers to resell it to their customers. The Commission has not developed a size standard specifically for CMRS providers that offer resale IMTS. Such entities would fall within the larger category of wireless carriers and service providers. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

15. **Wireless Telecommunications Carriers (except Satellite).** Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[16] Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless

[12] 13 C.F.R. § 121.201, NAICS code 517911.

[13] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517911 in the left column for "Telecommunications Resellers") (last visited March 2, 2011).

[14] *See* FCC, International Bureau, Strategic Analysis and Negotiations Division, "2009 International Telecommunications Data" at page 1-2, Statistical Findings, and Table D at page 22 (April 2011). FCC website location http://www.fcc.gov/ib/sand/mniab/traffic/.

[15] *Id.*

[16] U.S. Census Bureau, 2007 NAICS Definitions: Wireless Telecommunications Categories (except Satellite), http://www.census.gov/naics/2007/def/ND517210.HTM (last visited March 2, 2011).

Telecommunications.[17] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[18] For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[19] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.[20] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[21] Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

16. **Wireless Communications Services**. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the Wireless Communications Services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[22] The SBA has approved these definitions.[23] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

2. Circuit-Status Report

17. The FR&O decided to continue to require common carriers that provide international telecommunications services on a facilities basis to file the annual circuit-status report. The Commission has not developed size standards specifically addressed to such carriers, but they fall within larger categories for which the SBA has developed size standards.

18. **Facilities-based Carriers**. Facilities-based providers of international telecommunications services would fall into the larger category of interexchange carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of

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[17] U.S. Census Bureau, 2002 NAICS Definitions: Paging, http://www.census.gov/epcd/naics02/def/NDEF517.HTM (last visited March 2, 2011); U.S. Census Bureau, 2002 NAICS Definitions: Other Wireless Telecommunications, http://www.census.gov/epcd/naics02/def/NDEF517.HTM (last visited March 2, 2011).

[18] 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[19] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517210 in the left column for "Wireless Telecommunications Carriers (except Satellite)") (last visited March 2, 2011).

[20] *See Trends in Telephone Service* at Table 5.3.

[21] *See id*.

[22] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[23] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[24] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.[25] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[26] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[27] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted n the FR&O.

19. According to the 2009 Circuit-Status Report, 75 U.S. international facility-based carriers filed information pursuant to section 43.82.[28] The report does not report employee or revenue statistics, so it is impossible for us to determine how many carriers could be considered small entities. Although it is quite possible that a carrier could report a small amount of capacity and have significant revenues, we will consider those 75 carriers to be small entities at this time. In addition, of the 79 carriers that filed an annual circuit-status report for 2009, there were at least four carriers that reported no circuits owned or in use at the end of 2009.[29]

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. The FR&O has decided that the commission needs to retain the annual traffic and revenue report and the annual circuit-status report, because the collection and public reporting of this information continues to be necessary in the public interest. Because carriers currently are required to file the section 43.61 annual traffic and revenue report and the section 43.82 annual circuit-status report, the decision to retain those reports will not impose any additional significant economic burden on small carriers. The decision to retain the reporting of IMTS and international private lines on a route-by-route basis similarly continues requirement of the current section 43.61. As a result, this conclusion will also not impose any significant additional burden on small carriers.

21. The decision in the FR&O to no longer require carriers to report separately their traffic and revenues for traffic between the conterminous 48 states and offshore U.S. points will reduce the burden on carries large and small. The FR&O recognizes that the Commission has integrated raters for offshore U.S. points into the domestic rate structure. As a result, such traffic is no longer considered to be

[24] 13 C.F.R. § 121.201, NAICS code 517110.

[25] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

[26] *See Trends in Telephone Service* at Table 5.3.

[27] *See id*.

[28] *See International Bureau Releases 2009 Year-End Circuit Status Report for U.S. Facilities-Based International Carriers; Capacity Use Shows Modest Growth*, rel. Dec. 21, 2010. The report is available on the FCC website at http://www.fcc.gov/ib/pd/pf/csmanual.html.

[29] *Id.*

international and, thus, need not be reported in an international traffic and revenue report. Similarly, the FR&O decided to no longer require carriers separately to report their international traffic to or from such offshore points from or to foreign points. Rather, the Commission concluded that such traffic should be combined with the carriers' traffic and revenues to and from the conterminous 48 states. As a result, this decision will also not impose any significant additional burden on small carriers.

22. The Commission's decision to eliminate the current Large-Carrier Quarterly Report in section 43.61(b) will reduce the burden on those large carriers that are now required to file the report. Because the quarterly reporting requirement was limited to large, dominant facilities-based and facilities-resale international carriers, the elimination of the report has no impact on small carriers. Similarly, the decision in the FR&O to eliminate the Foreign-Affiliated Carrier Quarterly Report in section 43.61(c) will reduce the burden on the mostly, if not exclusively, large, dominant U.S. carriers that are now required to file the report. The current reporting requirement applies to U.S.-authorized providers of IMTS resale that are affiliated with a foreign telecommunications provider (1) that has sufficient market power in its home market that it could distort competition in the U.S. market and (2) collects money form U.S. carriers for traffic between the United States and its home market.

23. The Commission's decision to eliminate the circuit-addition report under section 63.23(e) of the rules and the telegraph division of tolls report under section 43.51 will both reduce the burden on carriers large and small. As such, it will not impose any significant additional burdens on small businesses.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

24. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage or the rule, or any part thereof, for small entities."[30]

25. The FR&O retained the section 43.61(a) traffic and revenue and the section 43.82 annual circuit-status reports. That decision did not increase the burden of the reporting requirement on either small or large carriers. Further, the Commission's decision to eliminate the requirement that carriers report separately their traffic between the conterminous 48 states and U.S. offshore points or to report separately the traffic between U.S. offshore points and foreign points will reduce the burden of the annual traffic and revenue report and the circuit-status reports for both large and small carriers. Further, the decision to eliminate the large-carrier report under section 43.61(b), the foreign-affiliated-carrier quarterly reports under section 43.61(c), the circuit-addition report under section 63.23(e), and the telegraph division-of-tolls report under section 43.51 will also reduce the burden of the international reporting requirements on both large and small carriers. As such, we believe that the policies adopted in the FR&O will not significantly increase any burdens on small carriers. Because this FR&O does not adopt additional regulations for service providers, it is not necessary to consider any alternative approaches that would minimize the economic impact of the reporting requirements on small businesses.

[30] 5 U.S.C. § 603(c)(1)-(c)(4).

Report to Congress:

26. The Commission will send a copy of this First Report and Order and Further Notice of Proposed Rulemaking, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act.[31] In addition, the Commission will send a copy of the First Report and Order and Further Notice of Proposed Rulemaking, including a copy of this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the First Report and Order and Further Notice of Proposed Rulemaking and FRFA (or summaries thereof) will also be published in the *Federal Register.*[32]

[31] *See* 5 U.S.C. § 801(a)(1)(A).

[32] *See* 5 U.S.C. § 604(b).

APPENDIX B

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),[1] as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM).[2] Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM in paragraph 149. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[3] In addition, the Further Notice and IRFA will be published in the Federal Register.[4]

A. Need for, and Objectives of, the Proposed Rules

1. The Commission initiated this comprehensive review of the reporting requirements imposed on U.S. carriers providing international telecommunications services. The Commission believes that the proposals contained in the FNPRM will make it easier for carriers, both small and large, to provide the information required by the rules. Other proposals will provide the Commission with information it needs but does not receive on an annual basis. In addition, section 11 of the Telecommunications Act of 1996 directs the Commission to undertake, in every even-numbered year beginning in 1998, a review of certain regulations issued under the Communications Act of 1934, as amended.[5]

2. The objective of the FNPRM in this proceeding is to improve the reporting requirements imposed on carriers providing international telecommunications services in the proposed sections 43.62(a) and 43.62(b). Specifically, the FNPRM proposes to simplify, consolidate, and revise the annual traffic and revenue reporting requirements and the circuit-status reporting requirements. The rule also proposes to require entities to file some additional information in the traffic and revenue report that they do not now file. Additionally, the rule proposes to relieve service providers with annual revenues less than $5 million from filing traffic and revenue reports for IMTS resale and the provision of international miscellaneous services. Finally, the rule proposes to require all providers of international telecommunications services to file an annual services report that updates their contact information and indicates whether or not they provided service during the preceding calendar year. The FNPRM also seeks comment whether to require some additional entities that provide international telecommunications services to file the annual traffic and revenue report and some additional entities that provide international facilities to file the annual circuit-status report.

3. Section 43.61 requires all U.S. carriers providing international telecommunications services to file an annual report of their traffic and revenues. Under the proposed consolidated section 43.62(a), those same carriers (and possibly some additional entities that provide international telecommunications services) will file similar traffic and revenue information. Section 43.82 requires all U.S. facilities-based carriers providing international telecommunications services to file an annual report

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] We note that we may certify this proceeding under 5 U.S.C. § 605, because our action will not have a significant economic effect on a substantial number of small entities (as discussed).

[3] *See* 5 U.S.C. § 603(a).

[4] *Id.*

[5] Pub. L. No. 104-104, 110 Stat. 56 (1996).

on the status of their circuits. Under the proposed section 43.62(b), in this proceeding, those same carriers (and possibly some other providers of international telecommunications facilities) will file similar circuit-status information. The information derived from the international revenue and traffic report and circuit-status report is critical in understanding the international telecommunications market. These reports are the only source of publicly available information of this nature.

4. The information obtained from these reports is used extensively by the Commission, the industry, other government agencies, and the public. The Commission uses the information to evaluate applications for international facilities, track the development of the international telecommunications market and the competitiveness of each service and geographical market, formulate rules and policies consistent with the public interest, monitor compliance with those rules and policies, and gauges the competitive effect of its decisions on the market. Carriers use the information to track the balance of payments in international communications services and for market analysis purposes. Carriers and potential entrants use the information for, among other things, assessment of market opportunities and to monitor competition in markets. The Commission, along with other government agencies such as the Department of Justice, uses the information in merger analyses and negotiations with foreign countries. In addition, the information contained in the circuit- status report allows the Commission to comply with the statutory requirements of the Omnibus Budget Reconciliation Act of 1993.

B. Legal Basis

5. The FNPRM is adopted pursuant to sections 1, 4(i) and (j), 11, 201-205, 211, 214, 219, 220, 303(r), 309, and 403 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 161, 201-205, 211, 214, 219, 220, 303(r), 309, and 403, and the Cable Landing License Act of 1921, 47 U.S.C. §§ 35-39.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposals, if adopted.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[8] A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[9]

1. Traffic and Revenue Report

7. The proposals in the FNPRM apply only to entities providing international common carrier services pursuant to section 214 of the Communications Act; entities that operate a

[6] 5 U.S.C. § 603(b)(3).

[7] 5 U.S.C. § 601(6).

[8] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[9] 15 U.S.C. § 632.

telecommunications "spot market" that themselves carry international traffic; entities providing domestic or international wireless common carrier services under section 309 of the Act; entities providing common carrier satellite facilities under section 309 of the Act; entities licensed to construct and operate submarine cables under the Cable Landing License Act on a common carrier basis; and entities that provide international terrestrial telecommunications facilities on a common carrier basis (including incumbent local exchange carriers that offer such facilities). At present, carriers that provide international telecommunications services are required to file the annual traffic and revenue report. The FNPRM seeks comment on whether to have entities providing VoIP service interconnected with the public switched telephone network also file the traffic and revenue report. The FNPRM also proposes to have all filing entities file a Services Report with information about the filing entity – such as address, phone number, email address, and the international section 214 authorizations held by the carrier. Further, the FNPRM proposes a number of changes that would simplify the traffic and revenue report, as well as require some new information.

8. The entities that the FNPRM proposes to require to file the traffic and revenue and reports are a mixture of both large and small entities. The Commission has not developed a small business size standard directed specifically toward these entities. However, as described below, these entities fit into larger categories for which the SBA has developed size standards that provide these facilities or services.

9. **Facilities-based Carriers.** Facilities-based providers of international telecommunications services would fall into the larger category of interexchange carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[10] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.[11] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[12] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[13] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

10. In the 2009 annual traffic and revenue report, 38 facilities-based and facilities-resale carriers reported approximately $5.8 billion in revenues from international message telephone service (IMTS). Of these, three reported IMTS revenues of more than $1 billion, eight reported IMTS revenues of more than $100 million, 10 reported IMTS revenues of more than $50 million, 20 reported IMTS revenues of more than $10 million, 25 reported IMTS revenues of more than $5 million, and 30 reported

[10] 13 C.F.R. § 121.201, NAICS code 517110.

[11] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

[12] *See* Trends in Telephone Service at Table 5.3.

[13] *See id.*

IMTS revenues of more than $1 million. Based solely on their IMTS revenues the majority of these carriers would be considered non-small entities under the SBA definition.[14]

11. The 2009 traffic and revenue report also shows that 45 facilities-based and facilities-resale carriers (including 14 who also reported IMTS revenues) reported $683 million for international private line services; of which four reported private line revenues of more than $50 million, 12 reported private line revenues of more than $10 million, 30 reported revenues of more than $1 million, 34 reported private line revenues of more than $500,000; 41 reported revenues of more than $100,000, while 2 reported revenues of less than $10,000.

12. The 2009 traffic and revenue report also shows that seven carriers (including one that reported both IMTS and private line revenues, one that reported IMTS revenues and three that reported private line revenues) reported $50 million for international miscellaneous services, of which two reported miscellaneous services revenues of more than $1 million, one reported revenues of more than $500,000, two reported revenues of more than $200,000, one reported revenues of more than $50,000, while one reported revenues of less than $20,000. Based on its miscellaneous services revenue, this one carrier with revenues of less than $20,000 would be considered a small business under the SBA definition. Based on their private line revenues, most of these entities would be considered non-small entities under the SBA definition.

13. **IMTS Resale Providers.** Providers of IMTS resale services are common carriers that purchase IMTS from other carriers and resell it to their own customers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[15] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[16] Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. In the 2009 traffic and revenue report, 1,232 carriers reported that they provided IMTS on a pure resale basis.[17] Based on their IMTS resale revenues, IMTS resale service is primarily provided by carriers that would be considered small businesses under the SBA definition. For example, of the 1,232 IMTS resale carriers, 644 carriers reported revenues of less than $10,000; 1,025 had revenues less than $500,000; and 1,068 had revenues less than $1 million.[18] Consequently, the Commission estimates that the majority of IMTS resellers are small entities that may be affected by our action.

14. **Wireless Carriers and Service Providers.** Included among the providers of IMTS resale are a number of wireless carriers that also provide wireless telephony services domestically. The Commission classifies these entities as providers of Commercial Mobile Radio Services (CMRS). At present, most, if not all, providers of CMRS that offer IMTS provide such service by purchasing IMTS

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[14] *See* 13 C.F.R. § 121.201, NAICS Code at Subsector 517 – Telecommunications.

[15] 13 C.F.R. § 121.201, NAICS code 517911.

[16] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517911 in the left column for "Telecommunications Resellers") (last visited March 2, 2011).

[17] *See* FCC, International Bureau, Strategic Analysis and Negotiations Division, "2009 International Telecommunications Data" at page 1-2, Statistical Findings, and Table D at page 22 (April 2011). FCC website location http://www.fcc.gov/ib/sand/mniab/traffic/.

[18] *Id.*

from other carriers to resell it to their customers. The Commission has not developed a size standard specifically for CMRS providers that offer resale IMTS. Such entities would fall within the larger category of wireless carriers and service providers. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

15. **Wireless Telecommunications Carriers (except Satellite).** Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[19] Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.[20] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[21] For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[22] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.[23] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[24] Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

16. **Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the Wireless Communications Services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[25] The SBA has approved these definitions.[26] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that

[19] U.S. Census Bureau, 2007 NAICS Definitions: Wireless Telecommunications Categories (except Satellite), http://www.census.gov/naics/2007/def/ND517210.HTM (last visited March 2, 2011).

[20] U.S. Census Bureau, 2002 NAICS Definitions: Paging, http://www.census.gov/epcd/naics02/def/NDEF517.HTM (last visited March 2, 2011); U.S. Census Bureau, 2002 NAICS Definitions: Other Wireless Telecommunications, http://www.census.gov/epcd/naics02/def/NDEF517.HTM (last visited March 2, 2011).

[21] 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[22] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517210 in the left column for "Wireless Telecommunications Carriers (except Satellite)") (last visited March 2, 2011).

[23] *See* Trends in Telephone Service at Table 5.3.

[24] *See id.*

[25] Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[26] See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (Alvarez Letter 1998).

qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

17. **Providers of Interconnected VoIP services.** In addition to the carriers that now file the annual traffic and revenue report, the FNPRM seeks comment whether interconnected VoIP service providers should also file data on their international voice traffic. The entities that provide such services are a mix of large and small entities. We do not have information on the size of such VoIP providers. The 2007 Economic Census includes VoIP providers in a larger class called "Internet Service Providers" (ISPs), and classes such ISPs in two categories, depending upon whether the service is provided over the provider's own facilities (e.g., cable or DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers.[27] As a result, for the purpose of this IRFA we shall consider all such entities to be small entities within the meaning of the Small Business Act, which has an SBA small business size standard of 1,500 or fewer employees.[28] The latter are within the category of All Other Telecommunications,[29] which has a size standard of annual receipts of $25 million or less.[30] Our proposal pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts.[31] According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year.[32] Of these, 334 had annual receipts of under $5 million, and an additional 11 firms had receipts of between $5 million and $9,999,999.[33] Consequently, we estimate that the majority of interconnected VoIP providers are small entities.

18. **Spot Market operators.** 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. The Commission has not developed a small business size standard specifically for operators of spot markets. As a result, for purposes of this IRFA, we shall consider all such entities to be small businesses.

2. Circuit-Status Report

19. The proposals in the FNPRM apply only to entities that have international bearer circuits. The FNPRM proposes changes to the information that must be provided about international common

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[27] U.S. Census Bureau, 2007 NAICS Definitions: Wired Telecommunications Carriers, http://www.census.gov/naics/2007/def/ND517110.HTM (last visited March 2, 2011).

[28] 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

[29] U.S. Census Bureau, 2007 NAICS Definitions: All Other Telecommunications, http://www.census.gov/naics/2007/def/ND517919.HTM (last visited March 2, 2011).

[30] 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

[31] 13 C.F.R. § 121.201, NAICS code 519190. See also http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf

[32] http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=1200&-ds_name=EC0751SSSZ4&-_lang=en

[33] http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=1100&-ds_name=EC0751SSSZ4&-_lang=en

carrier circuits. The FNPRM also seeks comment whether data should be reported regarding non-common carrier international circuits.

20. **Providers of International Telecommunications Transmission Facilities**. According to the 2009 Circuit-Status Report, 75 U.S. international facility-based carriers filed information pursuant to section 43.82.[34] Some of these providers would fall within the category of Inter-exchange Carriers, some would fall within the category of Wired Telecommunications Carriers, while others may not. The Commission has not developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[35] The circuit-status report does not include employee or revenue statistics, so we are unable to determine how many carriers could be considered small entities under the SBA standard. Although it is quite possible that a carrier could report a small amount of capacity and have significant revenues, we will consider those 75 carriers to be small entities at this time. In addition, of the 79 carriers that filed an annual circuit-status report for 2009, there were at least four carriers that reported no circuits owned or in use at the end of 2009.[36]

21. **Satellite Telecommunications Providers.** Other providers of international transmission facilities are those that operate international common carrier and non-common carrier satellite systems. Such systems provide circuits to providers of international telecommunication services or provide circuits directly to end users. With respect to the circuits such systems provide to telecommunications service providers, those circuits are reported in the circuit-status reports of those providers. Circuits that operators of international satellite systems offer directly to end users are not now reported under the circuit-status report. It is those circuits that the FNPRM proposes to require operators of international satellite services to report in the circuit-status report. The Commission has not determined a size standard specifically for operators of international satellite systems that offer circuits directly to end users. However, two economic census categories address the satellite industry. Under SBA rules, the first category has a small business size standard of $15 million or less in average annual receipts.[37] The second category has a size standard of $25 million or less in annual receipts.[38]

22. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[39] Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.[40] Of this total, 464 firms had annual receipts

[34] *See* International Bureau Releases 2009 Year-End Circuit Status Report for U.S. Facilities-Based International Carriers; Capacity Use Shows Modest Growth, rel. Dec. 21, 2010. The report is available on the FCC website at http://www.fcc.gov/ib/pd/pf/csmanual.html.

[35] 13 C.F.R. § 121.201, NAICS code 517110.

[36] *Id.*

[37] 13 C.F.R. § 121.201, NAICS code 517410.

[38] 13 C.F.R. § 121.201, NAICS code 517919.

[39] U.S. Census Bureau, 2007 NAICS Definitions, Satellite Telecommunications, http://www.census.gov/naics/2007/def/ND517410.HTM (last visited March 2, 2011).

[40] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ4: Receipts Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517210 in the left column for "Satellite Telecommunications") (last visited March 2, 2011).

of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.[41] Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

23. The second category, i.e., All Other Telecommunications, comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry."[42] For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.[43] Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49, 999,999.[44] Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

24. **Operators of Non-Common Carrier Undersea Cable Systems.** The FNPRM seeks comment on whether data should be filed for international non-common carrier circuits on submarine cable facilities. Neither the Commission nor the SBA has developed a size standard specifically for operators of non-common carrier undersea cables. Such entities would fall within the large category of Wired Telecommunications Carriers. The size standard under SBA rules for that category is that such a business is small if it has 1,500 or fewer employees.[45] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these carriers can be considered small entities.[46] We do not have data on the number of employees or revenues of operators of non-common carrier undersea cables. Because providers of non-common carrier undersea cables do not now file an annual circuit-status report, we do not know how many such entities provide circuits directly to end users. We do know that a number of such entities pay regulatory fees on such circuits, but the names of such entities are confidential. Because we do not have information on the number of employees or their annual revenues, we shall consider all such providers to be small entities for purposes of this IRFA.

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[41] *Id.*

[42] U.S. Census Bureau, 2007 NAICS Definitions, All Other Telecommunications, http://www.census.gov/naics/2007/def/ND517919.HTM (last visited March 2, 2011).

[43] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ4: Receipts Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517919 in the left column for "All Other Telecommunications") (last visited March 2, 2011).

[44] *Id.*

[45] 13 C.F.R. § 121.201, NAICS code 517110.

[46] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

25. **Operators of Non-Common Carrier International Transmission Facilities.** At present, carriers that provide common carrier international transmission facilities report the number of circuits they provide under the annual circuit-status report. The FNPRM seeks comment on whether data should be filed on international non-common carrier circuits on terrestrial facilities. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of non-common carrier terrestrial facilities. The operators of such terrestrial facilities would fall within the larger category of Wired Telecommunications Carriers. The appropriate size standard under SBA rules for the Wired Telecommunications Carriers category is that such a business is small if it has 1,500 or fewer employees.[47] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1000 or more. Providers of microwave international transmission facilities would fall into the category of Fixed Microwave Services. The Commission has not yet defined a small business with respect to microwave service. For purposes of this IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite). The appropriate size standard under SBA rules for the Wireless Telecommunications Carriers (except satellite) is that such a business is small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1383 firms that operated that year. Of those 1,383 firms, 1,368 had fewer than 100 employees and 15 had more than 100 employees. Thus under this category and the associated small business size standard, the majority of these providers of international terrestrial facilities can be considered small providers.[48]

26. **Incumbent Local Exchange Carriers**. Because some of the international terrestrial facilities that are used to provide international telecommunications services may be owned by incumbent local exchange carriers, we have included small incumbent local exchange carriers in this present RFA analysis, to the extent that such local exchange carriers may operate such international facilities. (Local exchange carriers along the U.S.-border with Mexico or Canada may have local facilities that cross the border.) Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange carriers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[49] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[50] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[51] As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer

[47] 13 C.F.R. § 121.201, NAICS code 517110.

[48] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

[49] 13 C.F.R. § 121.201, NAICS code 517110.

[50] *See* Trends in Telephone Service, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (Trends in Telephone Service).

[51] *See id.*

employees), and "is not dominant in its field of operation."[52] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[53] Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the FNPRM. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analysis and determinations in other, non-RFA contexts. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.[54]

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

27. The First Report and Order Portion of this order decided to retain the annual traffic and revenue reporting requirements and the annual circuit-status reporting requirements because it found that the collection and public reporting of this information continues to be necessary in the public interest. The FNPRM portion of this order seek comment on whether some additional entities that offer international telecommunications services should also file the annual traffic and revenue report. It also seeks comment on whether data should be filed for international non-common carrier circuits on submarine cable, satellite and terrestrial facilities. These additional entities play a significant role in the U.S. international telecommunications market. The FNPRM seeks comment on whether data from these entities is needed to gain a more comprehensive reporting of the international telecommunications market.

28. The FNPRM, however, also proposes to simplify and clarify the reporting requirements to reduce the burdens for both small and large carriers. Because carriers currently are required to file annual traffic and revenue and circuit-status reports, the proposals contained in the FNPRM will not impose any significant additional economic burden on small carriers. The proposal to exempt filing entities that only provide IMTS resale and have les than $5 million in annual revenues from filing traffic and revenue data will exempt over 1100 carriers from filing traffic and revenue data. The FNPRM seeks comment on whether to have additional entities to file the report, which if imposed would place a burden on those additional entities to file a traffic and revenue report. However, because the information contained in the proposed reporting requirements is the same information that the carriers collect and maintain during the routine course of business, that burden should not be substantial.

29. The FNPRM contains proposed revisions to the traffic and revenue reporting requirements, including a new proposed Service Report and five proposed schedules that show the specific information that filing entities would be required to report and how they would report it. The proposed reporting requirements are described below. However, because the Commission may change

[52] 15 U.S.C. § 632.

[53] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[54] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector…," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

the reporting proposed in the FNPRM based on comments received in this proceeding, the schedules may also change.

30. First, the FNPRM proposes a new, generic Service Report that all entities that provide international telecommunications services or facilities would be required to file annually. This report would require such entities to file basic information on the services or facilities they provided in the preceding calendar year. Specifically, the entity would be required to provide its name, its Form 499-A identification number,[55] its Commission Registration System (CORES) identification number,[56] and to update its contact information. Additionally, those carriers that hold authorizations under section 214 of the Communications Act are required to list those authorizations. In addition, a filing entity would be required to indicate which international telecommunications services it provided during the previous year. Based on the services the responding carrier reported, the schedule would inform the carrier which other schedules, if any, the carrier would be required to complete.

31. Proposed Schedule 1 would replace the IMTS billing codes used in the current section 43.61 report and would, like those codes, require filing entities to continue to submit country-by-country traffic and revenue information for their IMTS service—albeit in a much simplified manner. Filing entities would use the proposed Schedule 1 to report both "outbound" and "inbound" IMTS traffic and revenues. The proposed schedule would require filing entities to report their minutes of outbound and inbound IMTS, the revenues associated with those minutes, the amount of payouts they make to foreign telecommunications organizations for terminating outbound traffic and the amount of settlement receipts they receive from foreign telecommunications entities to terminate traffic in the United States. The proposed schedule would institute a new requirement for filing entities to report separately the payments they make to their correspondents for terminating traffic on landline networks from the payments for terminating traffic on mobile networks (mobile termination rates). This information is needed because current mobile termination rates are significantly higher than the rates for termination on landline networks and those charges may be excessive, not cost based and possibly discriminatory. The FNPRM proposes to clarify the reporting of "non-route-specific revenues" derived from monthly or non-recurring charges for international calling plans by requiring a filing entity to allocate such revenues in a way that relates them to the entity's international traffic

32. The proposed Schedule 1 would make a number of changes that would simplify the reporting of IMTS. First, filing entities would no longer be required to report the number of outbound or inbound IMTS calls they handled. Second, the proposed schedule would eliminate the requirement that filing entities report regional totals for their IMTS services. Third, the proposed schedule would also eliminate the current requirement that filing entities separately report traffic they settle under alternative arrangements such as "country direct," "country beyond" and reorigination. Rather, filing entities would be able to include information on such traffic in the total traffic and revenue figures they report for each country they serve.

[55] FCC Form 499-A is the Commission's Telecommunications Reporting Worksheet. All telecommunications carriers are required to file this form annually to calculate contributions to the universal service support mechanisms, as well as to the TRS Fund, the cost recovery for numbering administration, and the cost recovery for the shared costs of local number portability. In addition, the information is used by carriers to comply with the Commission's registration requirement for new and existing carriers providing interstate telecommunications service. See 47 C.F.R. §§ 52.1(b), 52.32(b), 54.711(a), 64.604(c)(4)(iii)(B), and 64.1195.

[56] CORES is a web-based, password-protected, registration system that assigns a unique 10-digit FCC Registration Number (FRN) for use when doing business with the FCC. See New Commission Registration System (CORES) to be Implemented July 19, Public Notice, 15 FCC Rcd 18754 (2000).

33. Proposed Schedule 2 would require filing entities to report a number of pieces of traffic and revenue information on a world-total, rather than route-by-route basis. First, it would require filing entities to report their world-total traffic and revenues for facilities-based IMTS and for IMTS resale they handled during the preceding year. Filing entities would be required to total the traffic and revenue figures for these two services to report a total traffic and revenue figure for all U.S.-billed IMTS and to report the percentage of those world-total figures that is attributable to non-route-specific revenues. Second, the proposed schedule would require filing entities to report their world-total U.S.-billed IMTS minutes and revenues separately for three major market segments (residential, business and government, and U.S. resellers). Third, the proposed schedule would require filing entities to report on a world-total, rather than route-by-route basis, the traffic and revenues they derive from reoriginated traffic and from traditional transiting IMTS. The proposed schedule would simplify the reporting of IMTS resale by eliminating the current requirement that filing entities provide a list of the countries to which they provided IMTS resale. Additionally, the proposed schedule would exempt from the IMTS resale filing requirement any filing entity that had IMTS resale revenues of less than $5 million during the preceding year.

34. Proposed Schedule 3 would require filing entities to provide country-by-country information on the international private line services they provided in the preceding year. The proposed schedule would require filing entities to report separately the revenues they received for private line service provided over facilities they own and for service provided over resold circuits. Filing entities would no longer be required to report separately each type of private line service they provided. Rather, they would merely report the 64 Kbps equivalents of the private line circuits they provided.

35. Proposed Schedule 4 would require filing entities to continue to provide world-total revenue information for each international "miscellaneous service" they provided during the preceding year, but on a simplified basis. Services other than IMTS and private line service would be considered "miscellaneous services." First, the proposed schedule would exempt from the filing requirement any miscellaneous service for which a filing entity had less than $5 million in revenue. Second, filing entities would no longer be required to report the volume of traffic of each service they provided. Filing entities would be required to provide only the name and a brief description for each miscellaneous service and the total annual revenues they received for that service.

36. Proposed Schedule 5 would implement the revised section 43.82 circuit-status report. The proposed schedule would continue to require filing entities to provide a snapshot of their active and idle circuits as of December 31st of each year, but on a simplified basis. Filing entities would continue to report the circuits they have in place for each country they serve. Filing entities would also continue to report separately the circuits they have on submarine cables, satellites, and terrestrial links. The proposed schedule would continue to require filing entities to report their circuit use in units of 64 Kbps equivalent circuits. The proposed schedule, however, would no longer require filing entities to report separately each service for which they use their circuits. The proposed schedule would also eliminate the current requirement that filing entities report the number of 64 Kbps equivalent virtual circuits they derive from their bearer circuits by means of circuit-multiplication equipment.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

37. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for

small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage or the rule, or any part thereof, for small entities."[57]

38. The FNPRM seeks comment on a number of proposals to simplify and consolidate the reporting requirements for carriers providing international telecommunications services. The proposals in the FNPRM are designed to reduce the regulatory requirements for both small and large carriers, while maintaining and enhancing the goals the reports serve.

39. The possible change to the reporting requirements with the most significant impact on small carriers is the proposal to exempt pure resale carriers with less than $5 million in revenues from IMTS resale during the preceding year from the need to file a traffic and revenue report. Based on the number of carriers filing the annual traffic and revenue report in 2009, the majority of carriers would be considered small carriers.[58] This proposal would benefit a substantial number of small entities by relieving them from the requirement\ to report their IMTS resale traffic.

40. The FNPRM proposes to simplify the information that the carriers, both small and large, must submit for any traffic and revenue reports. First, the FNPRM proposes to eliminate the requirement that carriers provide information on the number of messages that they carried the previous year. Second, the FNPRM proposes to eliminate the requirement that carriers use the billing codes set out in the Section 43.61 Filing Manual and the Public Notices. Currently, carriers report international telephone traffic under 12 different billing codes, and the various billing codes have presented recurrent problems for carriers filing the reports as well as those who review the reports. Third, the FNPRM proposes a set of schedules for the reporting of the traffic and revenue and circuit-status information in lieu of the two filing manuals that are currently used. The FNPRM proposes to streamline some of the reporting categories, which will reduce the reporting requirements on both small and large entities.

41. The FNPRM proposes to consolidate sections 43.61 (traffic and revenue reporting requirement) and 43.82 (circuit-status reporting requirement) into one rule. Consolidating the rules will eliminate the requirement that carriers file two separate reports – one for traffic and revenue data and one for circuit-status data. The FNPRM proposes that one filing manual be developed that will satisfy the reporting requirements of the new rule. One consolidated filing manual for both reports would be less confusing and less time-consuming for both small and large carriers.

42. The FNPRM also proposes to require carriers to file the report earlier than currently required in order to improve the timeliness of the resulting report. In selecting a proposed filing date, the Commission tried to balance the need for more expeditious filing with any burden an earlier filing would place on carriers. In addition, with more timely-filed data, it would be unnecessary for carriers to file corrected traffic and revenue data. The proposed new filing date minimizes any burden on the carriers because it does not coincide with any other reporting requirements. Also, carriers will not be burdened with filing another report with corrected data.

43. The FNPRM seeks comment on whether it would significantly speed and facilitate the submission of data if the Commission were to encourage or mandate carriers to submit their data electronically. Electronic filing would lessen the burden of filing the reports for both small and large carriers. Because carriers maintain the data electronically, it would be practicable for carriers to submit the data in the same format rather than convert the data into a different format.

[57] 5 U.S.C. § 603(c)(1)-(c)(4).

[58] *See* FCC, 2009 International Telecommunications Data, p. 1, Statistical Findings (April 200). The report is *available at* http://www.fcc.gov/ib/sand/mniab/traffic/.

44. The FNPRM proposes a general report that will make it very simple for a carrier to determine which, if any, reporting requirements are applicable to the carrier. In addition, this proposal will simplify a carrier's compliance with other reporting requirements, such as the Form 499-A.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

45. None.

APPENDIX C

Final Rules

Parts 43 and 63 of the Commission's rules are amended as follows:

PART 43 – REPORTS OF COMMUNICATION COMMON CARRIERS, PROVIDERS OF INTERNATIONAL INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES AND CERTAIN AFFILIATES

1. The authority citation for Part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996; Pub. Law 104-104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220, as amended.

2. Remove § 43.53.

3. Section 43.61(a) is amended to read as follows:

(a) Each common carrier engaged in providing international telecommunications service between the United States (as defined in the Communications Act, as amended, 47 U.S.C. § 153) and any country or point outside that area shall file a report with the Commission not later than July 31 of each year for service actually provided in the preceding calendar year.

4. Section 43.61 is amended by removing paragraph (b).

5. Section 43.61 is amended by removing paragraph (c).

6. Section 43.82(a) is amended to read as follows:

(a) Each facilities-based common carrier engaged in providing international telecommunications service between the United States (as defined in the Communications Act, as amended, 47 U.S.C. § 153) and any country or point outside that area shall file a circuit-status report with the Chief, International Bureau, not later than March 31 each year showing the status of its circuits used to provide international services as of December 31 of the preceding calendar year.

PART 63 – EXTENSION OF LINES, NEW LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

7. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

8. Section 63.23 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

APPENDIX D

Proposed Rules

It is proposed that Parts 0, 43 and 63 of the Commission's rules be amended as follows:

PART 0 – COMMISSION ORGANIZATION

1. The authority citation for Part O continues to read as follows:

Authority: Secs 5, 48 Stat 1068, as amended, 47 U.S.C. 155

2. Add Section 0.457(d)(1)(viii):

§ 0.457

(d)(1)

(viii) Disaggregated international revenue payout and traffic data filed under section 43.62 of this chapter.

PART 43 – REPORTS OF COMMUNICATION COMMON CARRIERS, PROVIDERS OF INTERNATIONAL INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES AND CERTAIN AFFILIATES

2. The authority citation for Part 43 is amended to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996; Pub. Law 104-104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220, as amended; Cable Landing License Act of 1921, 47 U.S.C.35-39.

3. Remove § 43.61.

4. Add Section 43.62 to read as follows:

§ 43.62 Reporting requirements for holders of international Section 214 authorizations and providers of international services.

(a) Annual Reports.

Not later than May 1 of each year, any person or entity that holds an authorization pursuant to section 214 of the Communications Act to provide international telecommunications service; or any person or entity that provided interconnected Voice over Internet Protocol service between the United States (as defined in the Communications Act, as amended, 47 U.S.C. § 153) and a foreign point during the previous year; shall submit the following reports:

(1) Any person or entity that holds an authorization pursuant to section 214 to provide international telecommunications service shall report whether it provided international telecommunications services or owned international circuits the preceding year.

(2) Each common carrier engaged in providing international telecommunications service, and each person or entity engaged in providing interconnected Voice over Internet Protocol service, between the United States (as defined in the Communications Act, as amended, 47 U.S.C. § 153) and any country or point outside that area shall file a report with the Commission showing revenues, payouts, and traffic for such international telecommunications service and interconnected Voice over Internet Protocol service provided during the preceding calendar year.

(3) Each person or entity owning international facilities between the United States (as defined in the Communications Act, as amended, 47 U.S.C. § 153) and any country or point outside that area shall file a circuit-status report with the Commission showing the status of its circuits as of December 31 of the preceding calendar year.

(b) Filing Manual.

The information required under this section shall be furnished in conformance with the instructions and reporting requirements prepared under the direction of the Chief, International Bureau, prepared and published as a filing manual.

5. Remove § 43.82

PART 63 – EXTENSION OF LINES, NEW LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

6. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

7. The following sections are amended to replace "§ 43.61" and "§ 43.82" with " 43.62":

Section 63.10(c)(2)
Section 63.10(c)(4)
Section 63.63.22(d)
Section 63.22(e)

APPENDIX E

Proposed Service Report And Filing Schedules