



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU AND OFFICE OF ECONOMICS AND ANALYTICS SEEK COMMENT ON UPCOMING THIRD MANDATORY DATA COLLECTION FOR INMATE CALLING SERVICES

WC Docket No. 12-375

**Comment Date: 30 days after date of publication in the Federal Register**

**Reply Comment Date: 45 days after date of publication in the Federal Register**

### I. INTRODUCTION AND BACKGROUND

By this Public Notice, the Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) (collectively, WCB/OEA) seek comment on the contours and specific requirements of the forthcoming Third Mandatory Data Collection for inmate calling services (ICS).<sup>1</sup> In the *2021 ICS Order*, the Commission directed WCB/OEA to develop a new data collection related to providers' operations, costs, demand, and revenues.<sup>2</sup> The Commission explained that it would use the collected data to set permanent interstate and international ICS provider-related rate caps that more closely reflect providers' costs of serving correctional facilities.<sup>3</sup> The Commission also emphasized that the data would enable it to evaluate and, if warranted, revise the current ancillary service charge caps.<sup>4</sup>

The Commission delegated authority to WCB/OEA to implement this Third Mandatory Data Collection, including "determining and describing the types of information required related to providers' operations, costs, demand, and revenues," and directed WCB/OEA to develop a template and instructions for the collection.<sup>5</sup> The Commission also directed WCB/OEA to consider record suggestions regarding, among other matters, data granularity, cost allocation, and specificity in definitions and instructions in

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<sup>1</sup> In the *2020 ICS Notice*, the Commission sought comment on whether and how the Commission should proceed with any new data collection. *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8532-33, paras. 132-33 (*2020 ICS Notice*). The record demonstrated the need to "collect, in a more consistent and directed manner, the data and information necessary to respond to the various criticisms in the record about the imperfections and inconsistencies in the data from the Second Mandatory Data Collection." *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, FCC 21-60, at 100, para. 218 (2021) (*2021 ICS Order* or *2021 ICS Notice*).

<sup>2</sup> *2021 ICS Order* at 100, para. 218. The Commission has conducted two prior mandatory data collections relating to inmate calling services in the past eight years—the 2013 First Mandatory Data Collection and the 2015 Second Mandatory Data Collection. See, e.g., *id.* at 100-01, para. 219 (discussing the two prior data collections).

<sup>3</sup> See, e.g., *id.* at 30-31, para. 71.

<sup>4</sup> *Id.* at 101-02, para. 221.

<sup>5</sup> *Id.* at 100, 101-02, paras. 218, 221. The draft instructions and template for the Third Mandatory Data Collection are posted on the Commission's website. See Appx. A. The template consists of a Word document and Excel spreadsheets. For simplicity, we refer to these respective portions of the template as the Word template and the Excel template.

designing the data collection,<sup>6</sup> and “to require each provider to fully explain and justify each step of its costing process” including, where appropriate, “to specify the methodology the provider shall use in any or all of those steps.”<sup>7</sup>

## II. OVERALL STRUCTURE OF THE DATA COLLECTION

Pursuant to our delegated authority, WCB/OEA have drafted proposed instructions, a template, and a certification form for the Third Mandatory Data Collection.<sup>8</sup> We seek comment on all aspects of these documents. Do they sufficiently implement the requirements the Commission articulated for the mandatory data collection in the *2021 ICS Order*?<sup>9</sup> If not, what steps should we take to improve the proposed documents? The Commission’s prior data collections have demonstrated that detailed and specific instructions and templates are essential to ensure that providers use similar procedures to determine and report their costs, revenues, and other data.<sup>10</sup> We invite comment on whether the proposed instructions and template are sufficiently detailed to accomplish this objective. If not, what additional instructions, inquiries, or fields should we add? Conversely, are there any instructions, inquiries, or fields that should be removed because they are unnecessary to ensure that providers report uniform and accurate data and other information?

### A. Instructions to the Third Mandatory Data Collection

We seek comment on whether the instructions provide sufficient guidance to ensure that providers use uniform methodologies and report the required information in a consistent manner. What improvements can WCB/OEA make to the instructions? Are there any changes that would clarify the instructions or increase uniformity across providers’ responses, particularly regarding how to report and allocate their costs? If so, what specific changes should we make? Are there any definitions that are unclear?<sup>11</sup> Are there any undefined terms we should define? Is there alternative or additional language that would minimize ambiguity in any instruction? The proposed instructions also include many requests that are not specifically described below. We seek comment on all aspects of the proposed instructions, including on those requests that we do not address individually in this Public Notice.

*Reporting Period.* The proposed instructions generally seek data for each calendar year from 2019 through 2021, but seek cost data only for calendar year 2021, in part to minimize the burden of responding to this data collection. Is this the correct period for general data requests, such as revenues, site commission payments, and calling minutes? Is cost data only for calendar year 2021 the most relevant to collect? Would cost data from 2019, on the other hand, provide the most representative data set, given that the data from 2020 and 2021 will reflect the impact of the COVID-19 pandemic upon operations?<sup>12</sup> Should we adopt a longer or shorter period for any set of requests? If so, why? Are there

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<sup>6</sup> *2021 ICS Order* at 102-03, paras. 223-25. The Commission also directed WCB/OEA to “incorporate lessons learned from the two prior data collections to ensure that [the Commission] collect[s], to the extent possible, uniform cost, demand, and revenue data from each provider.” *Id.* at 103, para. 225; *see also id.* at 103-04, para. 226 (directing WCB/OEA to collect, at a minimum; information designed to enable the Commission to meet certain objectives).

<sup>7</sup> *2021 ICS Order* at 104, para. 227.

<sup>8</sup> *See* Appx. A, *infra*.

<sup>9</sup> *See 2021 ICS Order* at 102-04, paras. 223-27.

<sup>10</sup> *Id.* at 103, para. 224 (highlighting one commenter’s view that “many of the issues with the current dataset appear to have arisen due to differing provider interpretations of instructions and terms, and that the Commission should minimize the potential for such differing interpretations as much as possible”).

<sup>11</sup> *See, e.g., id.* at 103, para. 224.

<sup>12</sup> Letter from Gregory R. Capobianco, Counsel for the Wright Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed Sept. 3, 2021) (Wright Petitioners Sep. 3, 2021 *Ex Parte*) (identifying the potential impact of the COVID-19 pandemic upon the data collection).

any specific known and measurable changes to ICS-related investments, expenses, revenues, and demand over the next few years that are not reflected in the data the proposed instructions seek to collect?

*Financial Information.* The proposed instructions require providers to report financial data in accordance with generally accepted accounting principles and specify that the carrying value of all assets shall reflect the results of recent impairment testing that accurately removes any overstatement of carrying value otherwise recorded in a provider's book of accounts. Under generally accepted accounting principles, an asset or asset group is impaired when its carrying amount, that is, the value reflected on the balance sheet, net of depreciation or amortization, exceeds its fair market value. In that case, the value of the impaired asset or asset group is written down and the reduced value is reflected on the balance sheet and a loss is recorded on the income statement. Is this the correct approach? If not, why not? How often do providers test their assets for impairment and how often are they required to do so under generally accepted accounting principles? Are additional instructions needed to ensure that the carrying value of providers' assets is not overstated?<sup>13</sup> If so, what other instructions should we adopt?

We seek comment on whether providers maintain sufficient records to enable them to respond fully to the data collection. If not, what additional steps should we take to ensure that the Commission has sufficient information to set reasonable permanent provider-related rate caps for interstate and international ICS and to revise the current ancillary service change caps? Should we adopt workarounds that would provide reasonable proxies for any financial data that providers are unable to report and, if so, what workarounds should we specify?

*Cost Allocation.* We propose several steps for providers to follow in allocating their costs among various services, as set forth in the proposed instructions. What refinements, if any, should we make to our proposed cost allocation methodology? Is there an alternative methodology that would better ensure that providers allocate their costs in a manner consistent with how they are incurred? If so, what is that methodology and why would it produce more accurate results than the proposed method?<sup>14</sup> Are there additional allocation steps or instructions that would result in greater uniformity in providers' cost allocation procedures or greater accuracy in the cost allocation results?<sup>15</sup> Do all or most providers routinely track certain data in the normal course of operating their businesses that should be used to develop allocators for particular costs or groups of costs? Are there additional steps we should take to ensure that each provider will directly assign its investments and expenses to the extent possible? Similarly, are there additional steps we can take to ensure that each provider will allocate shared and common investments and expenses in a cost-causative manner?

*Response Granularity.* We propose that all providers submit data both at the company-wide level and for each correctional facility in which the provider offered calling services during the reporting period.<sup>16</sup> We seek comment on this approach. Assuming we should require providers to report data on a facility-level basis, how should we require providers that track costs only on a contract level to respond? Are the cost allocation procedures set forth in the instructions sufficient to enable these providers to allocate costs down to the facility and, if not, what additional procedures should we require? Are there any additional data we should seek that would help ensure that providers allocate costs to facilities in a manner that more accurately reflects how such costs are incurred? How and to what degree should a provider document or explain the way it derives facility-level costs?

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<sup>13</sup> See *2021 ICS Order* at 37, para. 86; *id.* at 33, para. 77 (explaining how Global Tel\*Link Inc. (GTL) argued that it could not respond to a WCB request for additional cost, revenue, and cost allocation information because it “does not maintain records that would allow it to respond,” leading the Commission to adjust GTL’s reported data in setting interim provider-related rate caps).

<sup>14</sup> See, e.g., *id.* at 102-03, para. 223.

<sup>15</sup> Wright Petitioners Sept. 3, 2021 *Ex Parte* (discussing the need for clear cost allocation methodology).

<sup>16</sup> See, e.g., *2021 ICS Order* at 102-03, para. 223.

The proposed instructions give providers the option of reporting their investment and expense data for ICS and related ancillary services without separating them into interstate and intrastate components or, if they prefer, to perform that separation prior to reporting their data. This approach reflects the fact that we are unaware of any material cost differences between providing interstate and intrastate calling services based on the record in this proceeding to date.<sup>17</sup> Is that understanding correct? Are there any data for which a separation into interstate and intrastate components would be helpful in determining the costs providers incur solely in providing interstate and international calling services and related ancillary services?

### **B. Template**

We propose to require providers to submit the requisite data using a reporting template, to be filed through the Commission's electronic comment filing system (ECFS).<sup>18</sup> The proposed template consists of a Word document (Appendix A to the instructions) for responses requiring narrative information and Excel spreadsheets (Appendix B to the instructions) for responses that require specific numbers or information. We seek suggestions for improvements we can make to the template. Is there an alternative organization that would reduce any perceived burdens? Are there other organizational or substantive improvements we can make to the reporting requirements? Are there inquiries we should add to the templates? Are there inquiries we should eliminate? If so, why? Do any questions require clarification?

### **III. SPECIFIC INQUIRIES**

*General Categories of Information Requested.* The proposed instructions require providers to submit certain types of information related to their operations, costs, demand, and revenues. Are the categories of data described in sufficient detail in the proposed instructions? Are there additional categories or subcategories of information we should require providers to submit, in order to gather accurate, consistent, and sufficiently disaggregated data?<sup>19</sup> Is there additional information that would help quantify the relative financial importance of different products and services in each provider's business portfolio or ICS operations? Is there additional information we could seek to facilitate a thorough accounting of the providers' investments, particularly to distinguish investments in intangible assets that were created internally from investments in intangible assets and goodwill generated by acquisitions or asset purchases? If so, how should we draw this distinction and how should any distinctions be reflected in the development of permanent rate caps? Is there additional information we should seek to help thoroughly account for a provider's recurring capital expenses or recurring operating expenses? Should customer deposits be subtracted from the provider's net investment in assets, the base upon which an allowable rate of return is calculated? Do customer deposits represent non-investor-supplied capital? Does the provider pay interest on the outstanding customer deposit balance? Is the provider able to earn a return on the outstanding customer deposit balance? Are there additional subcategories of data we should seek that will enable the Commission to better estimate providers' costs of serving individual correctional facilities?

*Demand for Interstate and International Calling Services.* We propose to seek information on providers' demand for interstate and international calling services by requiring providers to report billed minutes, unbilled minutes, average daily population, number of telephones installed, and the number of kiosks installed. Are there other types of data that would provide a more accurate picture of demand such

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<sup>17</sup> See, e.g., *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14175, para. 134 (2013) (highlighting the existence of uniform intrastate and interstate ICS rates).

<sup>18</sup> See, e.g., *Inmate Calling Services Mandatory Data Collection*, WC Docket No. 12-375, General Instructions, <https://docs.fcc.gov/public/attachments/DOC-343708A3.docx> (Second Mandatory Data Collection Instructions).

<sup>19</sup> See, e.g., *2021 ICS Order* at 30-31, para. 71 (emphasizing the need for such data in order to allow the Commission to develop permanent interstate provider-related rate caps for all correctional facilities).

as the number of beds, or the rate of new account generation, at a particular facility? For example, would the rates of new account generation or account termination serve as accurate proxies for demand, or otherwise reflect cost drivers that could be used to better allocate provider costs? Could a measure of demand other than minutes be used as the unit of sale for the permanent rate caps? If providers do not know the average daily population of certain facilities they serve, what data could they report to provide a reasonable proxy for average daily population in those instances? What impact has the COVID-19 pandemic had on the cost of providing and the demand for intrastate, interstate, and international calling services? Do providers expect that impact to persist?

*Data for Jails with Fewer than 1,000 ADP.*<sup>20</sup> In the *2021 ICS Order*, the Commission observed that the record then before it did not “allow [it] to reasonably set permanent or even new interim interstate rate caps for jails with less than 1,000 average daily population.”<sup>21</sup> What types of data would provide a more accurate picture of the costs providers incur in serving such jails? What are the specific factors that differentiate the costs associated with serving such jails from the costs of serving larger jails? What data should we collect to analyze those factors?<sup>22</sup> What are the one-time costs that providers incur to initiate service for a newly incarcerated person in such jails as compared to larger jails? Should we require providers to separately report these one-time costs? If so, what are the appropriate one-time cost categories? The record suggests that higher turnover in jails with less than 1,000 ADP may affect providers’ and facilities’ costs.<sup>23</sup> How should providers be required to report turnover data, and how can we analyze those data to identify the impact of turnover on provider and facility costs, or to distinguish between them? Are there additional data we can request that would help the Commission quantify and evaluate the effect of turnover?

*Site Commissions.* We propose to require that providers separately identify the amounts of (1) legally mandated, (2) contractually prescribed, (3) monetary, and (4) in-kind site commission payments. Are there other categories of information we should seek regarding site commissions? How should providers submit information concerning in-kind payments? For example, should we require providers to describe their in-kind payments in detail and assign them a dollar value? In the *2021 ICS Order*, the Commission observed that the record did not allow it to “determine on a permanent basis whether and what portion of [site commission] payments are legitimately related to the cost” of providing inmate calling service.”<sup>24</sup> What types of information should we seek to help make this determination? Should we, for example, require providers to explain whether they agree to pay site commission on ICS calls to get footholds in facilities where they can offer non-ICS products and services that will not be subject to site commission payments obligations? If so, how can we ensure that providers allocate their site commission payments between their ICS-related operation and those other operations in a cost-causative manner?

*Security Services.* As the Commission explained in the *2021 ICS Notice*, to determine whether any costs associated with security services should be recovered through ICS rates, it first must be able to determine whether any of those costs are directly related to the provision of ICS and distinguish them from other security costs incurred by correctional institutions.<sup>25</sup> To facilitate this determination, the proposed instructions would require providers to report security costs in connection with the providers’ ICS-related and non-ICS-related operations. Are there other data we should seek concerning such costs?

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<sup>20</sup> The Commission explained in the *2021 ICS Order* that “[a]lthough in some places we use the term ‘smaller jails’ to refer to facilities with average daily populations less than 1,000, that usage is not meant to imply that such jails are small in any absolute sense.” *Id.* at 141-42, para. 311 n.932.

<sup>21</sup> *E.g., id.* at 13, para. 30.

<sup>22</sup> See *2021 ICS Notice* at 140-41, paras. 307-08.

<sup>23</sup> See *id.* at 144-45, para. 319.

<sup>24</sup> *2021 ICS Order* at 45, para. 102 (internal quotations and citations omitted).

<sup>25</sup> *2021 ICS Notice* at 146-47, para. 323.

What categories of security costs are properly considered directly related to ICS? What categories are not? How should we require providers to separate and report security costs which are legitimately or directly related to ICS from general facility security costs? Should we require providers to specify whether any such cost is incurred by the ICS provider or the facility?<sup>26</sup> Are there any other data we could collect that would assist the Commission in determining whether security costs are directly or legitimately related to the provision of ICS? Should we collect specific data about security costs that may not be directly or legitimately related to the provision of ICS, such as costs incurred to monitor and record every call made by an incarcerated person?

*Ancillary Service Charges.* We propose to require providers to report revenues and disaggregated costs incurred for ancillary services.<sup>27</sup> We seek comment on this proposal, as reflected in the instructions. In the *2021 ICS Order*, the Commission observed that the existing record did not allow it to “adjust [the] caps on ancillary service fees beyond the new cap on fees for single-call services and third-party financial transaction fees.”<sup>28</sup> The Commission found that there was “no reliable way to exclude ancillary service costs from [the] provider-related rate caps calculations at this time.”<sup>29</sup> What other revenue or disaggregated cost data should we seek to enable the Commission to evaluate and, if warranted, revise the current ancillary service charge caps and/or isolate and exclude ancillary service costs from any future calculations related to per-minute rate caps?<sup>30</sup>

In the *2021 ICS Order*, the Commission identified “confusion among industry stakeholders regarding the relationship between the automated payment fee and third-party financial transaction fees as they relate to credit card processing fees.”<sup>31</sup> To determine how credit card processing works in relation to these two ancillary services, we propose to require providers to report the total amount of revenues derived from charging automated payment fees and third-party transaction fees, to report the amount of that total that is credit card processing separately, and specify whether the provider, an affiliate, or a third party performs the processing. Do commenters agree with this approach? If not, how should we require providers to report credit card processing revenues embedded in revenues derived from these two ancillary service charges?

The Commission also expressed concern about “the adverse effect of revenue-sharing arrangements between calling service providers and third-party financial institutions” in the context of ancillary services.<sup>32</sup> To assist the Commission in understanding the prevalence and effect of such agreements, we propose to require providers to identify revenue-sharing agreements related to ancillary services and the revenues shared under those agreements. What other information should we seek on revenue-sharing agreements?

*Additional Data.* Beyond the foregoing, are there other types of data we should require providers to submit to ensure that we fully capture the costs of providing ICS? Are there additional data that may enable the Commission to better understand the costs ICS providers and correctional facilities incur in

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<sup>26</sup> The *2021 ICS Notice* observed that there is record evidence suggesting that some of the security and surveillance functions described by the National Sheriffs’ Association as being performed by correctional facility staff appear to duplicate some of the security functions that providers report as costs. *Id.* at 146-47, para. 323 & n.966.

<sup>27</sup> See 47 CFR § 64.6000(a).

<sup>28</sup> *2021 ICS Order* at 13, 34, paras. 30, 79. The instructions for the Second Mandatory Data Collection required certain ancillary service revenues to be reported separately, but providers were not required to report their ancillary service costs separately from other inmate calling services costs. Further, providers were not required to separately report costs relating to any specific ancillary service. See *Second Mandatory Data Collection Instructions* at 9-10.

<sup>29</sup> By consequence, the Commission allowed such costs to “remain as part of the industry costs” used in the calculations for the interim rate caps. *2021 ICS Order* at 34, para. 79.

<sup>30</sup> See, e.g., *id.* at 35, para. 80.

<sup>31</sup> *2021 ICS Notice* at 149-50, para. 327.

<sup>32</sup> *Id.* at 152-53, para. 333.

connection with ICS? How should any such data be compiled and used to ensure that direct and shared and common costs are assigned or allocated in the most cost-causative manner? What data should we collect concerning international calling costs to isolate those costs and to eliminate the risk of double counting?<sup>33</sup>

Are there other issues we should consider regarding the data we propose to collect? Should we seek data on the marketing and sale of inmate calling services, such as contracts by which correctional facilities purchase calling services on behalf of incarcerated persons at fixed monthly rates? If so, what data should we ask for? For example, should we direct providers to identify in narrative responses the terms of any bulk-purchasing arrangements they have with correctional facilities?<sup>34</sup> What data should we ask for from providers that enter into service arrangements, such as GTL's contract with San Francisco, whereby incarcerated people receive free telephone service?

#### IV. MISCELLANEOUS

In the *2021 ICS Order*, the Commission delegated to WCB/OEA the authority to “require providers to submit any additional information that they deem necessary to help the Commission formulate permanent rate caps or to revise [the] rules governing ancillary service charges.”<sup>35</sup> We propose to require all providers to submit audited financial statements or reports, or similar documentation, for the relevant reporting period, to the extent they have been produced in the ordinary course of business.<sup>36</sup> Are there other reports or documentation we should seek? Should we require providers to provide copies of all or a random sample of their ICS contracts to assist Commission staff in verifying or crosschecking data submitted in response to the Third Mandatory Data Collection?

Separately, in the *2021 ICS Order*, the Commission reasoned that the benefits of conducting a third data collection “far outweigh any burden on providers” given the “adverse impact that unreasonably high rates and ancillary services charges have on incarcerated people and those family and loved ones they call.”<sup>37</sup> While we do not revisit this general finding, we do seek to maximize the benefits of this data collection while minimizing the costs to the extent we can. We therefore seek comment on whether our proposals will meet the Commission's objectives in requiring the data collection.<sup>38</sup> If not, what additional questions should we ask to ensure the Commission has all the data it needs to set permanent rate caps, evaluate ancillary service fees, and adjust the caps for those fees, if necessary? Conversely, are there ways that we could minimize the burden on providers while still ensuring we collect all the data the Commission needs to meet its goals? If so, what specific changes do commenters propose in this regard? We also seek to ensure that smaller providers are not disproportionately burdened by this data collection, while recognizing that data from smaller providers is critical to the Commission's ratemaking process going forward.<sup>39</sup> Do commenters have suggestions as to how we can get the information we need from smaller providers in a less burdensome way? If so, how?

In the *2021 Order*, the Commission eliminated the separate interim rate cap that had applied to interstate collect calls, an action that reflected a record establishing that collect calls now play only a

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<sup>33</sup> *Id.* at 154, para. 338 (highlighting commenter concerns that rate caps for international calls may be double counting providers' costs for international calls, because those costs are already included in the overall ICS costs the Commission used to set interim interstate rate caps).

<sup>34</sup> *See, e.g., 2021 ICS Order* at 102-03, para. 223. “Bulk purchasing” in this context refers to the purchase by a correctional facility of ICS at fixed monthly rates or other similar arrangements such as unlimited calling plans at fixed rates. *See Wright Petitioners et al. Comments* at 16.

<sup>35</sup> *Id.* at 104, para. 227.

<sup>36</sup> *See Second Mandatory Data Collection Instructions* at 1.

<sup>37</sup> *2021 ICS Order* at 101-02, para. 221.

<sup>38</sup> *Id.* at 101-04, paras. 221-26.

<sup>39</sup> *Id.* at 13, 21, 143-46, paras. 30, 47, 306-10, 316-21.

limited role in the inmate calling services marketplace and that there is at most a relatively small difference between the costs of providing collect and non-collect inmate calling services calls.<sup>40</sup> Consistent with that Commission action, the proposed instructions do not differentiate among debit, prepaid, and collect calls. We seek comment on whether the instructions should distinguish among these call types. If so, why and for which specific components of the proposed data collection?

Finally, as part of the Commission's continuing effort to advance communications equity for all,<sup>41</sup> including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, we invite comment on any equity-related considerations<sup>42</sup> and benefits (if any) that may be associated with the upcoming Third Mandatory Data Collection. Specifically, we seek comment on how our proposals for that collection may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

## V. PROCEDURAL MATTERS

*Filing of Comments and Replies.* 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 the Commission's Electronic Comment Filing System. *See* FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).<sup>43</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

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<sup>40</sup> *Id.* at 19, para. 42.

<sup>41</sup> Section 1 of the Communications Act of 1934, as amended, provides that the Commission "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

<sup>42</sup> We define the term "equity" consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

<sup>43</sup> The Protective Order issued in this proceeding permits parties to designate certain material as confidential. *Rates for Inmate Calling Services*, WC Docket No. 12-375, Order, 28 FCC Rcd 16954 (WCB 2013); *see also Rates for Inmate Calling Services*, WC Docket No. 12-375, Order, 35 FCC Rcd 9267 (WCB 2020) (clarifying non-confidential treatment for certain information). Filings that contain confidential information should be appropriately redacted and filed pursuant to the procedure described therein.



- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.<sup>44</sup>

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. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in this Public Notice and the instructions in order to facilitate our internal review process.

*People with Disabilities.* We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

*Ex Parte Presentations.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>45</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules.<sup>46</sup> Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*Supplemental Initial Regulatory Flexibility Act Analysis.* As required by the RFA,<sup>47</sup> the Commission has prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Public Notice. The Supplemental IRFA is set forth in Appendix B. The Commission requests written public comments on the Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments provided in the Public Notice. The Commission will send a copy of the Public Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>48</sup> In addition, summaries of this Public Notice and the Supplemental IRFA will be published in the Federal Register.<sup>49</sup>

*Final Paperwork Reduction Act Analysis.* The Public Notice contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section

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<sup>44</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

<sup>45</sup> 47 CFR § 1.1200 *et seq.*

<sup>46</sup> 47 CFR § 1.1206(b).

<sup>47</sup> See 5 U.S.C. § 603.

<sup>48</sup> See 5 U.S.C. § 603(a).

<sup>49</sup> *Id.*

3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.<sup>50</sup> 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(4), we previously sought comment on how the Commission will further reduce the information collection burden for small business concerns with fewer than 25 employees.<sup>51</sup>

*Additional Information.* For further information, please contact Erik Raven-Hansen, Wireline Competition Bureau, Pricing Policy Division, at (202) 418-1532 or [erik.raven-hansen@fcc.gov](mailto:erik.raven-hansen@fcc.gov), or Peter Bean, Wireline Competition Bureau, Pricing Policy Division, at (202) 418-0786 or [peter.bean@fcc.gov](mailto:peter.bean@fcc.gov). Please copy [mandatorydatacollection@fcc.gov](mailto:mandatorydatacollection@fcc.gov) on any email correspondence.

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<sup>50</sup> Contemporaneously with the publication of this Public Notice in the Federal Register, we will publish a notice in the Federal Register seeking comment pursuant to the PRA on the information collection requirements for the Mandatory Data Collection in the *2021 ICS Order* and this Public Notice. We will consider comments submitted in response to both Federal Register notices in finalizing this information collection for submission to OMB.

<sup>51</sup> *2020 ICS Order on Remand*, 35 FCC Rcd at 8536-37, para. 146.

**APPENDIX A****Mandatory Data Collection Instructions and Templates**

The draft instructions and template for the Third Mandatory Data Collection are available at this link: [Third Mandatory Data Collection Instructions](#).

## APPENDIX B

## Supplemental Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) (collectively, WCB/OEA) have prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Public Notice. We request written public comments on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments provided on the first page of this Public Notice. The Commission will send a copy of the Public Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the Public Notice and the Supplemental IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Data Collection**

2. In this Public Notice, WCB/OEA seek comment on the contours and specific requirements of the forthcoming Third Mandatory Data Collection for inmate calling services (ICS).<sup>4</sup> In the *2021 ICS Order*, the Commission adopted a new data collection requirement.<sup>5</sup> The Commission determined that this data collection would enable it to adopt permanent interstate and international rate caps, protect consumers against unjust and unreasonable ancillary service charges, and improve its continuing review of the inmate calling services marketplace.<sup>6</sup>

3. Pursuant to their delegated authority, WCB/OEA have drafted proposed instructions and a template for the Third Mandatory Data Collection<sup>7</sup> and are issuing the Public Notice to seek comment on all aspects of these documents.

**B. Legal Basis**

4. The legal basis for any action that may be taken pursuant to the Public Notice is contained in sections 1, 2, 4(i)-(j), 201(b), 218, 220, 276, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 218, 220, 276, and 403.

**C. Description and Estimate of the Number of Small Entities to Which the Third Mandatory Data Collection Will Apply**

5. 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 Third Mandatory Data Collection. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>8</sup> In addition, the term “small business” has

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<sup>1</sup> 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).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> In the *2020 ICS Notice*, the Commission sought comment on whether and how the Commission should proceed with any new data collection. See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8532-33, paras. 132-33 (2020) (*2020 ICS Notice*). That *Notice* included an Initial Regulatory Flexibility Analysis. *Id.* at 8547, Appx. D.

<sup>5</sup> *2021 ICS Order* at 100, para. 218.

<sup>6</sup> *2021 ICS Order* at 101-02, para. 221.

<sup>7</sup> See Appx. A, *infra*.

<sup>8</sup> See 5 U.S.C. § 601(6).

the same meaning as the term “small-business concern” under the Small Business Act.<sup>9</sup> A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>10</sup>

6. Regulatory Flexibility Analyses were incorporated in the *2020 ICS Notice* and *2021 ICS Order*.<sup>11</sup> In those analyses, the Commission described in detail the small entities that might be affected. Accordingly, in this Public Notice, for the Supplemental IRFA, we hereby incorporate by reference the descriptions and estimates of the number of small entities from these previous Regulatory Flexibility Analyses.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

7. The Public Notice seeks comments on the specifics of the Third Mandatory Data Collection to ensure calling services rates, charges, and practices are just and reasonable. The Third Mandatory Data Collection requires ICS providers to submit, among other things, data and other information on calls, demand, operations, company and contract information, information about facilities served, revenues, site commission payments, and ancillary fees.

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

8. The RFA requires an agency to describe any significant 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 rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>12</sup> We will consider all of these factors when we receive substantive comment from the public and potentially affected entities.

9. The Third Mandatory Data Collection is a one-time request and does not impose a recurring obligation on providers. Because the Commission’s *2021 ICS Order* requires all ICS providers to comply with the mandatory data collection, the collection will affect smaller as well as larger ICS providers. The Commission has taken steps to ensure that the data collection template is competitively neutral and not unduly burdensome for any set of providers. Additionally, the Public Notice asks whether there are ways of minimizing the burden of the data collection on providers while still ensuring that the Commission collects all the data needed to meet its goals.

10. WCB/OEA will consider the economic impact on small entities, as identified in comments filed in response to the Public Notice and this Supplemental IRFA, in reaching its final conclusions and finalizing the instructions and the template for the Third Mandatory Data Collection.

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

11. None.

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<sup>9</sup> See 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.”

<sup>10</sup> See 15 U.S.C. § 632.

<sup>11</sup> *2020 ICS Notice*, 35 FCC Rcd at 8547, Appx. D (Initial Regulatory Flexibility Analysis); *2021 ICS Order*, 35 FCC Rcd at 8542-46, Appx. C (Supplemental Final Regulatory Flexibility Analysis).

<sup>12</sup> 5 U.S.C. § 603(c)(1)-(4).