

SUPPORTING STATEMENT

A. Justification:

1. The Federal Communications Commission (Commission) is requesting approval of a one-time mandatory collection of cost and other data regarding the provision of inmate calling services (ICS) from all ICS providers.¹ ICS providers operate a service that allows inmates to make calls to individuals outside the correctional facility where the inmate is being held, regardless of the technology used to deliver the service.

In the *Inmate Calling Services Second Report and Order*,² FCC 15-136, the Commission undertook comprehensive reform of the ICS marketplace. Among other actions, the *Second Report and Order* establishes new rate caps that apply to both interstate and intrastate ICS calls, limits and caps ancillary services charges, and takes other measures to ensure that ICS rates are fair, just, and reasonable. In connection with the regulation of ICS rates, the *Second Report and Order* adopts a new, one-time Mandatory Data Collection to collect, among other things: cost and demand information from ICS providers; information related to the use of credit card processing systems and third-party transaction fees; information related to the provision of video visitation; and information related to international ICS.³

Under section 201 of the Communications Act of 1934, as amended, a principal responsibility of the Commission is to ensure that charges and practices related to interstate and international telecommunications services, including interstate and international ICS, are just and reasonable. Additionally, under section 276 of the Communications Act of 1934, the Commission is required to ensure that payphone service providers (including those that serve correctional institutions) are fairly compensated for both interstate and intrastate calls. The Commission anticipates that the forthcoming additional data will enable to Commission to assess the costs related to ICS and ensure that ICS rates and practices remain just, reasonable, and fair as required by sections 201 and 276.

Several interested parties, including ICS providers and state departments of correction, filed motions with the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) seeking stays of various portions of the *Second Report and Order*. On March 7, 2016, the court stayed two provisions of the Commission's ICS rules: 47 CFR § 64.6010 (setting caps on ICS calling rates that vary based on the size and type of facility being served) and 47 CFR § 64.6020(b)(2) (setting caps on charges and fees for single-call services).⁴ The D.C. Circuit's *March 7 Order* denied motions for stay of the Commission's ICS rules "in all other respects."⁵ On March 23, 2016, the D.C. Circuit modified the stay imposed in the *March 7 Order* to provide that "47 CFR § 64.6030 (imposing interim rate caps)" be stayed as applied to "intrastate calling services."⁶

¹ We address the annual reporting, certification, and consumer disclosure requirements for providers of ICS in a separate supporting statement.

² *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (2015) (*Second Report and Order*).

³ *Id.*, 30 FCC Rcd at 12908.

⁴ See *Global Tel*Link v. FCC*, No. 15-1451 (D.C. Cir. Mar. 7, 2016) (*Partial Stay Order*); see also *Wireline Competition Bureau Addresses Applicable Rates for Inmate Calling Services and Effective Dates for Provisions of the Inmate Calling Services Second Report and Order*, Public Notice, DA 16-280 (WCB Mar. 16, 2016).

⁵ *Partial Stay Order* at 2.

⁶ See *Global Tel*Link v. FCC*, No. 15-1451 (D.C. Cir. Mar. 23, 2016) (*Modified Partial Stay Order*); see also *Wireline Competition Bureau Updates Applicable Rates for Inmate Calling Services*, Public Notice, DA 16-332 (WCB Mar. 29, 2016) (March 29 Public Notice).

The Court did not stay any other aspects of the *Second Report and Order*, leaving in place, for example, the Commission's provisions for the annual reporting and certification requirement (47 CFR § 64.6060) and the consumer disclosure of inmate calling services rates (47 CFR § 64.6110). Additionally, the Court did not stay the following rules adopted in the *Second Report and Order*: 47 CFR § 64.6000 (Definitions); 47 CFR § 64.6020(a), 47 CFR § 64.6020(b)(1), 47 CFR § 64.6020(b)(3)-(5) (Ancillary Service Charge); 47 CFR § 64.6040 (Rates for Calls Involving a TTY Device); 47 CFR § 64.6070 (Taxes and Fees); 47 CFR § 64.6080 (Per-Call, or Per-Connection Charges); 47 CFR § 64.6020 (Flat-Rate Calling); and 47 CFR § 64.6100 (Minimum and Maximum Prepaid Calling Account Balances).

Statutory authority for this information collection is contained in sections: 1, 4(i), 4(j), 201, 276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 201, 276 and 303(r).

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

2. The one-time mandatory ICS data collection (detailed in paragraphs 197-202 of the *Second Report and Order*) requires ICS providers to provide data on the costs of, and revenues from, interstate, international, and intrastate ICS. The data collection will require ICS providers to include data on ICS calls, various ICS costs, company and contract information, information about facilities served, ICS revenues, and ancillary fees. The practical utility of the requested data is that it will help the Commission ensure just, reasonable, and fair ICS rates as mandated by the Communications Act of 1934, as amended.

Specifically, the data will be used to assess costs and revenues related to ICS and ensure that ICS rates and ancillary fees remain just, reasonable, and fair as required by sections 201 and 276. The data the Commission will collect are usually and customarily compiled and utilized by ICS providers in the normal course of their activities, which should minimize the burden of the collection.

3. The Commission's Wireline Competition Bureau (Bureau) staff has developed a standardized template for the submission of data, as well as instructions aimed at simplifying compliance with, and reducing the burdens of, the data collection. The template includes filing instructions and text fields for respondents to use to explain portions of their filings, as needed. Providers are encouraged to file their responses electronically via the Commission's Electronic Comment Filing System (ECFS).

4. The Commission is not aware of any similar information already available that can be used or modified for the purposes described in Item 2 above.

5. Because the Commission's *Second Report and 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.

6. The Mandatory Data Collection is a one-time request and does not impose a recurring obligation on providers. Not conducting the data collection would deprive the Commission of the detailed, industry-wide data necessary to ensure that ICS rates and fees remain just, reasonable, and fair.

7. No other special circumstances will apply to this information collection.

8. Pursuant to 5 C.F.R. § 1320.8 (d), the Commission published a 60-day notice in the Federal Register to solicit public comment on these reporting and certification requirements on August 1, 2016. See 81 FR 50499. Two comments were received from the following parties: the Wright Petitioners and

Global Tel*Link (GTL). We also note that Protocall filed an *ex parte* letter that appears to have been directed to either the reporting requirements or the One-Time Data Collection.⁷

These comments addressed both the 2018 One-Time Data Collection, as well as the annual reporting, certification, and consumer disclosure requirements. We address only the comments related to the 2018 One-Time Data Collection here, and address the comments related to the annual reporting, certification, and consumer requirements in a separate supporting statement. The comments are summarized and addressed below as follows: (1) comments on the effect of the D.C. Circuit’s *Partial Stay Order* and *Modified Partial Stay Order* on the proposed information collection; (2) components of the information collection; (3) the estimated burden associated with the proposed information collection; and (4) the possibility of adopting a *de minimis* exemption for small ICS providers.

Impact of the *Partial Stay Order*

GTL (at 4) urges the Commission to refrain from taking “any further action on the new information collection requirements pending the ongoing judicial review of the *2015 ICS Order*.” In particular, GTL (at 4) states that the mandatory data collection asks for information regarding “intrastate ICS costs and revenues, the payment of site commissions, and other matters that may implicate intrastate ICS issues,” and argues that the Commission should not require ICS providers to submit this data “until there is a demonstrated need for the information that justifies the administrative burden to provide it.”

Response. As noted above, the Commission’s provisions for the mandatory data collection were not stayed by the D.C. Circuit in either the *Partial Stay Order* or the *Modified Partial Stay Order*. Thus, there is no indication that the court will take any action that would affect the mandatory data collection. Moreover, the requirement at issue is critical to the Commission’s efforts to reform and regulate ICS and to the Commission’s ability to fulfill its statutory mandates. (See Item 2 above). Waiting for the litigation to conclude before seeking approval for the mandatory data collection would result in needless delay that would harm both the Commission’s ability to fulfill its obligations to ensure that ICS rates and fees are fair, just, and reasonable, and the interests of the consumers who rely on ICS.

Modifications to the Information Collected

First, the Wright Petitioners state (at 3-4) that the Commission should require each ICS provider to submit a Description and Justification (D&J) statement which would include, *inter alia*, an explanation of how the provider calculated its rate of return, and its component inputs. The Wright Petitioners further request (at 3-4) that the Commission “provide a uniform standard for all ICS providers to follow in calculating their rate[s] of return, which specifically details the permissible inputs.”

Second, the Wright Petitioners state (at 4) that the Commission should modify the definitions of “Direct Costs” and “Indirect Costs” and instruct providers to define each cost separately within the D&J statement and to separately identify the categories of each cost for each facility that the provider serves. The Wright Petitioners argue (at 4) that this change will help eliminate confusion.

Third, the Wright Petitioners state (at 5) that the Commission should request ICS data regarding providers’ indirect costs. Specifically, they contend (at 5) that the Commission should collect: ICS indirect costs, ICS indirect costs paid to affiliates, credit card processing services (CCPS) indirect costs, CCPS indirect costs paid to affiliates, collect ICS calls’ indirect costs, and collect ICS calls’ indirect costs

⁷ See letter from David Lindgren, President, Protocall to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 at 1 (filed Feb. 29, 2016) (requesting an exemption from “the mandatory reporting requirements.”) Out of an abundance of caution, we address Protocall’s letter both here and in the supporting statement related to the reporting requirements.

paid to affiliates. The Wright Petitioners argue (at 5) that the Commission must request the related indirect costs for each service to “ensure that the ICS providers submit consistent information.”

Fourth, the Wright Petitioners state (at 5) that the Commission should request a breakdown of ICS revenues earned, including revenues earned from ICS, CCPS, and collect calls. The Wright Petitioners argue (at 5) that the Commission must request revenue data to “ensure that the Commission and the public are able to confirm the accuracy of the provided information.”

Finally, the Wright Petitioners state (at 5) that the Commission should require the submission of total video visitation costs and revenues, as well as a breakdown of the total direct costs and total indirect costs associated with each ICS provider’s video visitation service. The Wright Petitioners argue (at 5) that the Commission should collect this information because it is collecting other information regarding the video visitation services provided by each ICS provider, and because providers may “use the same platform for ICS telephone and ICS video visitation services.”

Response. After considering the Wright Petitioner’s first argument, we find that requiring all providers to submit a D&J that contains a standardized calculation of their rate of return, including its component inputs, would be overly burdensome relative to the benefits such a requirement would produce. We continue to encourage providers to submit a D&J statement to the extent that they determine it would be helpful to provide the FCC with an explanation of their responses.

With respect to the Wright Petitioners’ second, third, and fourth requests that providers submit indirect cost data, we also find that the burden of producing this more granular data would outweigh the expected benefit. Collecting providers’ total and direct costs is a better way to achieve the goals of the mandatory data collection (as described in 2, above). Collecting total and direct cost information will also allow parties conducting analysis of this data to derive a measure of indirect costs by subtracting direct costs from total costs.

We agree with the Wright Petitioners, however, that there is great value in requiring providers to report more detailed information regarding their ICS-related revenues, and determine that the benefit of such information to our analysis significantly outweighs the relatively modest burden such a requirement would impose on providers. Accordingly, we add additional questions to the mandatory data collection to capture revenues providers earn from ICS, CCPS, collect calls, and video visitation.

Finally, with respect to the Wright Petitioners’ argument that the Commission should require the submission of additional data regarding video visitation, we add questions to the data collection form to require providers to submit data regarding revenues and the direct and total costs associated with the ICS provider’s video visitation services. We do not, however, add questions to the data collection requiring providers to submit their indirect costs related to ICS provider’s video visitation services because, as discussed above, we find that the burden providers would face in collecting and reporting such granular cost information exceeds the benefit of collecting the additional information the Wright Petitioners seek. Additionally, by collecting total and direct costs associated with video visitation services, the Commission and other examining parties will be able to derive a measure of indirect costs by subtracting direct costs from total costs.

Estimated Burden

GTL argues (at 5-6) that the estimated burden associated with the mandatory data collection is too low. GTL states (at 3) that the estimated 80 hours for the data collection is “substantially underestimated,” and suggests (at 4) that if GTL were to spend one hour per correctional facility to collect, compile, and formulate the data categories required by the Commission, it would spend “1900 hours to comply with the annual one-time data collection.”

Response. We note that GTL did not request to see the draft forms or instructions associated with this information collection, and thus has only seen the 60-day Federal Register notice and the burden hour estimates listed therein. As such, its comments on the estimated burden of this collection are speculative, at best. At a minimum, we find it implausible that a company with GTL’s expertise and resources would require anything approaching an hour per facility to complete the required forms. The Commission is filing the draft template and instructions for the mandatory data collection with this Supporting Statement. Because this collection is a more streamlined version of the previous collection, which had an estimated burden of 80 hours, we believe that GTL’s concerns may be assuaged upon review of those documents.

Nevertheless, after considering GTL’s comments, we have increased the estimated burden hours from 80 hours per respondent to 100 hours per respondent. We believe that 100 hours is sufficient time to allow the average ICS provider to report, in the format requested, the requested information – most, if not all, of which we believe ICS providers already maintain as part of their day-to-day business operations. ___

De Minimis Exception for Small Providers

Protocall argues (at 1) that it lacks the staff and support to either generate such “complex reports” or to “structure our revenue expense line items as specified by the FCC.” Although we are cognizant of the burdens certain requirements may place on smaller providers, we do not exempt any providers from responding to the Mandatory Data Collection. As described above (in 2), this collection is important to the Commission’s ability to fulfill its statutory obligations regarding ICS. Moreover, the data we receive from small providers will be vital to the Commission’s ability to ensure that any future rules it adopts are effective and fair for both large and small ICS providers. We note, for example, that the Commission relied heavily on the data provided by small providers in the *Second Report and Order*. We also note that Protocall’s claims are unsubstantiated, which makes it difficult to assess to magnitude of harm that it will face in completing the data collection. Ultimately, we find that the burden the annual data reporting and certification requirements will place on small ICS providers are far outweighed by the benefits these reports will bring.

9. The Commission does not anticipate providing any payment or gift to respondents.

10. The protective order in this proceeding⁸ provides confidential treatment for proprietary information submitted by ICS providers in response to the annual reporting and certification requirements. The Commission will provide for confidential treatment of any particular information identified as confidential by the provider. Each confidential document should be stamped and submitted to the Secretary’s Office with an accompanying cover letter, as specified by *Protective Order*. This is standard practice when the Commission seeks competitively sensitive information for ratemaking or other

11. The information collection does not address any matters of a sensitive nature.

12. The following represents the hour burden on the collections of information discussed herein.

Reporting Requirement:

(1) Number of respondents: Approximately 15.

(2) Frequency of response: One-time reporting requirement.

(3) Total number of responses annually: Approximately 15.

⁸ *Rates for Interstate Inmate Calling Services*, WC Docket 12-375, Protective Order, 28 FCC Rcd 16954 (2013) (*Protective Order*).

(4) Estimated Time per Response: 100 hours.

15 respondents x 100 hours per response x 1 response per respondent = 1,500 hours.

(5) Total burden: **1,500 hours**.

The Commission estimates that approximately 15 ICS providers will require 100 hours of reporting time.

Approximately 15 respondents x 1 response x 100 hours per response = 1,500 hours.

(6) Total estimate of “in house” cost to respondents: \$67,500.

(7) Explanation of the calculation:

The Commission estimates that approximately 15 carriers will be subject to this one-time reporting requirement.

We assume that respondents will use in-house accounting services (rate of \$45/hour) to satisfy this reporting requirement. Thus 1,500 hours x \$45 = \$67,500.

13. Estimated operations and maintenance (O&M) costs of respondents resulting from the collection of information:

(a) Total capital start-up costs component annualized over its expected useful life: \$0. The collections will not result in additional capital expenditures such as computers or software.

(b) Total operation and maintenance and purchase of services component: \$0.

(c) Total annualized cost requested: **\$0**.

14. There will be no additional costs to the Commission to receive these data. In addition, the data may be submitted via the Commission’s Electronic Comment Filing System, or via the Secretary’s Office, requiring no additional Commission resources to process.

15. This is a new information collection resulting in a program change/increase of 15 respondents, 15 responses, and 1,500 annual burden hours. These estimates will be added to OMB’s Active Inventory.

16. The Commission does not anticipate publishing any of the information collected. Rather, the cost data submitted by ICS providers will be treated as confidential under the protective order specific to WC Docket No. 12-375.

17. The Commission is not seeking approval not to display an OMB expiration date.

18. The Commission is reporting the following changes since the 60 Day Notice was published in the Federal Register on August 1, 2016 (81 FR 50499):

(a) In consideration of the public comments received in response to the 60 Day Notice, the Commission revised the estimated time per response from 80 to 100 hours and the total annual hourly

burden from 1,200 hours to 1,500 hours. These new estimates are reflected in the 30 Day Notice and submission to OMB.

There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

The Commission does not anticipate that the collection of information will employ statistical methods.