

SUPPORTING STATEMENT

A. Justification:

1. The Federal Communications Commission (Commission or FCC) is requesting the Office of Management and Budget's (OMB) approval of the new information collection requirements for providers of Inmate Calling Services (ICS).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 Service Second Report and Order*,² FCC 15-136, the Commission undertook comprehensive reform of the ICS marketplace.³ 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. The *Second Report and Order* further requires each ICS provider to file annual reports with the Commission and annual certifications that state that the provider is complying with the Commission's rules governing ICS. The annual reporting and certification rules require ICS providers to file, among other things: data regarding their ICS rates and minutes of use by facility and size of facility; current ancillary service charge amounts and the instances of use of each; the monthly amount of site commission payments; rates for video calling services and minutes of use by facility, as well as ancillary fees charges for such services; and the number of disability-related calls, problems associated with such calls, and ancillary fees charged in connection with such calls.⁴ The rules also require an officer of each ICS provider to certify annually the accuracy of the data submitted and the provider's compliance with the *Second Report and Order*. The consumer disclosure rule requires ICS providers to inform customers about their ICS rates and ancillary service charges.

Under section 201 of the Communications Act of 1934, a principal responsibility of the Commission is to ensure that charges and practices related to interstate and international telecommunications services, including interstate ICS, are just and reasonable. Additionally, under section 276 of the Act, the Commission is required to ensure that payphone service providers (including ICS providers) are fairly compensated for both interstate and intrastate calls. The annual certification and reporting requirements will enable the Commission to monitor ICS providers' rates and fees to ensure they comply with the provisions of the Report and Order and therefore ensure they are just, reasonable,

¹ We address the 2018 One-Time Data Collection requirement for providers of Inmate Calling Service 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 The Commission previously addressed rates for interstate ICS in 2013. See *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 12-375, 28 FCC Rcd 14107 (2013) (*2013 Order*).

⁴ See generally *Second Report and Order*.

and fair as required by sections 201 and 276. The consumer disclosure requirement will provide consumers with information that is relevant to consumer decision making and will allow the Commission to monitor ICS rates and fees.

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).⁵ The D.C. Circuit's *March 7 Order* denied motions for stay of the Commission's ICS rules "in all other respects."⁶ 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."⁷

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), which are relevant to this information collection. 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, 225, 276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 201, 225, 276 and 303(r).

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

2. The annual reporting requirements will require ICS providers to submit data regarding their interstate, international, and intrastate rates, by facility, and to note the name, size and type of each facility being served. Providers will also be required to report any fees for ancillary services, the amount of those fees, the number of times each fee was imposed, and the monthly amounts of any site commissions paid. Providers that offered video calling services during the reporting period must file the minutes of use and per-minute rates for those services, as well as ancillary service charges associated with video services. Providers also will be required to report: the number of disability-related calls they provided; the number of problems they experienced with such calls (e.g., dropped calls, poor call quality), and the number of incidents of each; and the number of complaints they received related to access to ICS by TTY and TRS users. These data will assist the Commission in monitoring the effectiveness of the reforms adopted in the *Second Report and Order*, facilitate enforcement of the Commission's rules, and enable the Commission to address the issues raised in the *Third Further Notice of Proposed Rulemaking*

⁵ 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).

⁶ *Partial Stay Order* at 2.

⁷ 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).

(FNPRM) that accompanied the *Second Report and Order*. To fulfill the certification requirement, an officer of each ICS provider must annually certify the accuracy of the information the company reports to the Commission. The requirement is a minimally burdensome way to ensure compliance with the *Second Report and Order*.

The consumer disclosure rule will require ICS providers to disclose their interstate, intrastate, and international rates and ancillary charges to consumers. The Commission will evaluate disclosures of all consumer charges for reasonableness based on a number of factors, including: disclosure of information regarding all material charges, such as the applicable rate and any ancillary service charges; use of plain language that can be readily understood by end users; description of single call and related services, making clear that consumers have less costly options; timeliness of notice of any updates and/or changes to the rates and fees prior to their implementation; availability of the disclosure in a prominent location on the ICS provider's website; whether the name, address and toll-free number of the ICS provider is included in the disclosure; and whether the disclosure includes the toll-free number for the FCC Consumer Help Center.⁸

The Wireline Competition Bureau (Bureau), pursuant to the authority delegated to it by the Commission in the *Second Report and Order*, has created forms to facilitate uniform reporting and certifications and to promote administrative simplicity.⁹ We expect that requiring ICS providers to input their information into standardized forms will make it easier for the Commission to review the incoming data. The forms include instructions on how to complete them.

The data the Commission will collect are usually and customarily compiled and utilized by ICS providers in the normal course of their activities, which we believe will minimize the burden of the collection. In addition, the burden of compliance for subsequent years should diminish as providers become familiar with the Commission's requirements and put systems in place to facilitate compliance.

Providers are free to post their consumer disclosures on their websites or in another manner readily available to consumers. The Commission is not dictating the precise form of the consumer disclosure. Instead, it is offering providers the flexibility to craft their own disclosures, as long as they meet the requirements of the *Second Report and Order* and the applicable rule. The information listed in the consumer disclosure will be compiled and utilized by ICS providers in the normal course of business, which should minimize the burden of the collection.

3. The Commission's *Second Report and Order* directs staff to develop a standardized template for the submission of data and to provide instructions to simplify compliance with, and reduce the burdens of, the annual certification and reporting requirements. The template will also include filing instructions and text fields for respondents to use to explain portions of their filings, as needed. Providers are encouraged to file their annual reports and certifications 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. Specifically, prior to the *Second Report and Order*, ICS providers were not required to file such data with the Commission.

5. Because the Commission's *Second Report and Order* requires all ICS providers to comply with the annual certification requirement, the requirement will affect smaller as well as larger ICS

⁸ *Second Report and Order*, 30 FCC Rcd at 12896.

⁹ As noted below, the Bureau has not created forms for the consumer disclosure required by the *Second Report and Order*.

providers. The Commission has taken steps to ensure that the reporting template is competitively neutral and not unduly burdensome for any set of providers.

6. Collecting the reporting and certifications on a less frequent basis, or not at all, would deprive the Commission of the ability to monitor ICS rates on an ongoing and reasonably current basis, which would undermine the Commission's efforts to ensure that ICS is provided at fair, just, and reasonable rates and to ensure that any ancillary services charges associated with ICS are also fair, just, and reasonable. It would also deprive consumers and other affected parties of the ability to monitor ICS quality, rates, and fees and file complaints in a timely fashion.

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. Comments were received from only two parties: Global Tel*Link Corporation (GTL) and the Wright Petitioners. 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.¹⁰

The comments addressed both the annual reporting, certification, and consumer disclosure requirements, as well as the 2018 One-Time Data Collection. We address only the comments related to the annual reporting, certification, and consumer requirements here, and address the comments related to the 2018 One-Time Data Collection 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) notes that the annual reporting requirement asks for information regarding intrastate ICS, and argues that the Commission should not require ICS providers to submit such 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 annual reporting and certification requirement (47 CFR § 64.6060) and the consumer disclosure of inmate calling services rates (47 CFR § 64.6110), 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 either the annual reporting and certification requirement or the consumer disclosure requirement. Moreover, the requirements at issue are critical to the Commission's efforts to reform and regulate ICS and to the the Commission's ability to fulfill its statutory mandates. (See Item 2 above). Waiting for the litigation to conclude before seeking approval for the annual reporting, certification, and consumer disclosure requirements would result in needless delay that would harm the Commission's ability to fulfill its obligations to ensure that ICS rates and fees are fair, just, and reasonable.

Modifications to the Information Collected

¹⁰ 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 2018 One-Time Data Collection.

The Wright Petitioners (at 6) ask the Commission to modify Form 2301(a), the Annual Reporting Form, to require ICS providers to submit the per-minute rate for each minute of the ICS communication. The Wright Petitioners (at 6) argue that this addition to the form better reflects a current practice of ICS providers, many of which charge a “different per-minute rates over the duration of the ICS communication.”

The Wright Petitioners (at 7) also request that the Commission modify Form 2301(a) to require providers to include information regarding authorized fees and mandatory fees. The Wright Petitioners (at 7) argue that this will allow the Commission to “obtain a more complete picture of the rates and fees paid by ICS customers.”

Response. First, the Wright Petitioners (at 6) present convincing evidence that some ICS providers charge different rates for different minutes of an ICS communication (i.e., a higher rate for the first minute and a lower rate for subsequent minutes). We agree with the Wright Petitioners’ that we should modify Form 2301(a) to capture different per-minute rates that may apply over the duration of a single ICS communication. While we find that asking providers to list the per-minute rate for each minute of an ICS communication would be overly burdensome, we amend Form 2301(a) to include not only the existing column that asks providers to list the per-minute rate for different types of ICS calls, but also a new column where providers can indicate if they charge a different amount for some minutes of a call. We find that this change will help the Commission better understand the ICS market and achieve the goals set out above, while also minimizing the burden on ICS providers.

Second, although we agree with the Wright Petitioners that collecting information regarding authorized fees¹¹ and mandatory fees¹² would provide the Commission with a more complete picture of the rates and fees paid by ICS customers, we find that the additional burden such a requirement would place on ICS providers outweighs the incremental benefit of collecting such data. An ICS provider that operates in multiple jurisdictions may be subject to a variety of different authorized and mandatory fees. Collecting, organizing, and reporting these fees could be substantially burdensome, especially for providers that do business in multiple jurisdictions. At this point, we find that the burden that ICS providers would face in collecting and reporting this information outweighs the benefits that might be gained from collecting the data, especially given that providers are only permitted to pass these taxes and fees through to consumers without any markup. To the extent that the Wright Petitioners are concerned about potential violations by providers marking up or modifying authorized or mandatory fees, we find that those concerns are best addressed through the Commission’s complaint processes, and not through mandatory reporting requirements.

Estimated Burden

GTL argues (at 2-3) that the estimated burden associated with the mandatory data collection is too low. GTL asserts (at 3) that the Commission’s estimate of 40 hours is “substantially understated,” and suggests (at 6) 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

¹¹ See 47 CFR § 64.6000 (“Authorized Fee means a government authorized, but discretionary, fee which a Provider must remit to a federal, state, or local government, and which a Provider is permitted, but not required, to pass through to Consumers. An Authorized Fee may not include a markup, unless the markup is specifically authorized by a federal, state, or local statute, rule, or regulation.”).

¹² See *id.* (“Mandatory Tax or Mandatory Fee means a fee that a Provider is required to collect directly from consumers, and remit to federal, state, or local governments. A Mandatory Tax or Fee that is passed through to a Consumer may not include a markup, unless the markup is specifically authorized by a federal, state, or local statute, rule, or regulation.”).

annual one-time data collection, and a similar amount of time annually to comply with the annual reporting requirement.”

Response. We note that GTL did not request to see the draft forms or instructions associated with this data 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. Nevertheless, after considering GTL’s comments, we have increased the estimated burden hours from 40 hours per respondent to 60 hours per respondent. We believe that 60 hours is sufficient 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 the annual reporting, certification, and consumer disclosure requirements. As described above (in 2), these requirements are 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 the challenges that it may 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 proceeding¹³ provides confidential treatment for the 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 purposes.

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.

a. Reporting Requirement:

(1) Number of respondents: Approximately 15.

(2) Frequency of response: Annual.

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

¹³ *Rates for Interstate Inmate Calling Services*, WC Docket 12-375, Protective Order, 28 FCC Rcd 16954 (2013) (*Protective Order*).

(4) Estimated Time per Response: 60 hours.

15 respondents x 60 hours per response x 1 response per respondent = 900 hours.

(5) Total annual burden: **900 hours**.

The Commission estimates that approximately 15 ICS providers will require 60 hours of reporting time.

Approximately 15 respondents x 1 response x 60 hours per response = 900 hours.

(6) Total estimate of “in-house” cost to respondents: **\$40,500**.

(7) Explanation of the calculation:

The Commission estimates that approximately 15 ICS providers will be subject to this reporting requirement.

We assume that respondents will use 60 hours of in-house accounting services (rate of \$45/hour) to satisfy this reporting requirement. Thus 900 hours x \$45 = \$40,500.

b. Certification Requirement:

(6) Number of respondents: Approximately 15.

(2) Frequency of response: Annual.

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

(4) Estimated Time per Response: 5 hours.

15 x 5 hours per response x 1 response per year per respondent = 75 hours.

(5) Total annual burden: **75 hours**.

The Commission estimates that approximately 15 ICS providers will require 5 hours of time per annual filing.

Approximately 15 respondents annually x 1 response annually x 5 hours per response = 75 hours.

(6) Total estimate of “in-house” cost to respondents: **\$9,375**.

(7) Explanation of the calculation:

The Commission estimates that 15 ICS providers will be subject to this certification requirement.

We assume that respondents will use 5 hours of an officer of the company's time (rate of \$125/hour) to satisfy this certification requirement. Thus, 75 hours per year x \$125 = \$9,375.

c. Consumer Disclosure Requirement

- (1) Number of respondents: Approximately 15.
- (2) Frequency of response: Third party disclosure requirement.
- (3) Total number of responses annually: Approximately 15.
- (4) Estimated Time per Response: Approximately 15 hours. It is difficult to estimate the time per response because the Commission is not dictating the precise form of the consumer disclosure. Each provider will post the relevant information on its website or in another manner readily available to consumers, and will be required to update the information only when the information changes. We estimate that compliance will require approximately 15 hours per provider annually, with 10 hours allocated to posting the information initially, and another 5 hours allocated to updating the information throughout the year.

15 respondents x 15 hours per response x 1 response per year per respondent = 225 hours.

- (5) Total annual burden: Approximately **225 hours**.

The Commission estimates that approximately 15 ICS providers will require approximately 15 hours each to comply with this requirement.

Approximately 15 respondents x approximately 1 response annually x approximately 15 hours per response = approximately 225 hours.

- (6) Total estimate of "in-house" cost to respondents: **\$28,125**.

- (7) Explanation of the calculation:

The Commission estimates that 15 ICS providers will be subject to the consumer disclosure requirements.

We assume that respondents will use approximately 15 hours of an officer of the company's time (rate of \$125/hour) to satisfy this requirement. Thus 225 hours per year x \$125 = \$28,125.

d. Total Annual Burden Hours:

(a)	Reporting Requirement:	900
(b)	Certification Requirement:	75
(c)	Consumer Disclosure Requirement:	225

Total Respondents: 15

Total Responses: 15

Total In-House Costs: \$40,500 + \$9,375 + \$28,125 = \$78,000.

Total Annual Burden Hours = 900 +75 +225 = 1,200 hours.

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 are unlikely to be any additional costs to the Commission because the data will be submitted by ICS providers in WC Docket No. 12-375 via the Commission's Electronic Comment Filing System, requiring no additional Commission resources to process or publish.

15. This is a new information collection resulting in a program change/increase of 15 respondents, 15 responses, and 1,200 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 ICS provider certifications will be available for public review via the Commission's ECFS.

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) The Commission revised the estimated time per response in the 30 Day Notice to "5—60 hours" and the total annual hourly burden to 1,200 hours in response to comments we received on the 60-Day Notice and to correct an error in that Notice.

There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

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