

SUPPORTING STATEMENT

This submission is being made pursuant to 44 U.S.C. § 3507 of the Paperwork Reduction Act of 1995 to obtain approval from the Office of Management and Budget (OMB) for a new one-time mandatory collection to obtain data and information regarding the provision of inmate calling services (ICS or calling services) from all ICS providers. The Commission is changing the title of this information collection from “Inmate Calling Services (ICS) 2021 One-Time Data Collection, WC Docket No. 12-375, FCC 21-60” to “Inmate Calling Services (ICS) 2022 One-Time Data Collection, WC Docket No. 12-375, FCC 21-60.”

A. Justification:

Circumstances that make the collection necessary:

1. Calling services allow incarcerated people to make calls to individuals outside the correctional facilities where they are being held, regardless of the technology used to deliver the service. Section 201 of the Communications Act of 1934 Act, as amended (Act), 47 U.S.C. § 201(b), requires that ICS providers’ interstate and international rates, charges, and practices be just and reasonable. Section 276 of the Act, 47 U.S.C. § 276, requires that payphone service providers (including ICS providers) be fairly compensated for completed calls.

In the *2021 ICS Order*,¹ FCC 21-60, the Commission continued its comprehensive reform of the ICS industry by, among other actions, directing the Commission’s Wireline Competition Bureau and Office of Economics and Analytics (collectively WCB/OEA) to collect data and other information regarding providers’ operations, costs, demand, and revenues.² The Commission explained that it would use the information collected through this Third Mandatory Data Collection to set permanent interstate and international ICS provider-related rate caps that more closely reflect providers’ costs of serving correctional facilities.³ The Commission also emphasized that the collected information would enable it to evaluate and, if warranted, revise the current ancillary service charge caps.⁴

The Commission delegated authority to WCB/OEA to implement this Third Mandatory Data

¹ *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, 36 FCC Rcd 9519 (2021) (*2021 ICS Order*). In the *2021 ICS Order*, the Commission found that 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.” *Id.* at 9618, para. 218. The Commission reasoned that the benefits of conducting a third data collection “far outweigh any burden to providers “given the “adverse impact that unreasonably high rates and ancillary service charges have on incarcerated people and those family and loved ones they call.” *Id.* at 9618-19, para. 219.

² *Id.* at 9618, para. 218.

³ *See, e.g., 2021 ICS Order* at 9548-49, para. 71. The Commission has conducted two prior mandatory data collections relating to inmate calling services in the past—the 2014 First Mandatory Data Collection and the 2015 Second Mandatory Data Collection. *See, e.g., 2021 ICS Order* at 9618-19, para. 219 (discussing the two prior data collections).

⁴ *2021 ICS Order* at 9619-20, para. 221. In addition to adopting the Third Mandatory Data Collection, the Commission expanded consumer disclosure requirements, and adopted new reporting requirements for ICS providers seeking a waiver of the Commission’s interstate and international rate caps. With regard to international rates, the Commission required that providers must separately disclose the rate component for terminating calls to each country where that provider terminates international calls. We address all of these requirements in a separate collection. *See* OMB Collection 3060-1222 (“Inmate Calling Services (ICS) Provider Annual Reporting, Certification, Consumer Disclosure, and Waiver Request Requirements”).

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.⁵ 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 designing the data collection,⁶ and “to require each provider to fully explain and justify each step of its costing process,” including, where appropriate, “specify[ing] the methodology the provider shall use in any or all of these steps.”⁷ The Commission specified that WCB/OEA would have the authority to require each provider to clarify and supplement its response to the data collection.⁸ The Commission also specified that each provider shall keep all records necessary to implement this collection and shall make such records available to the Commission upon request.⁹ Our burden estimates include the time it will take providers to comply with these requirements.

Pursuant to their delegated authority, WCB/OEA drafted proposed instructions, a template, and a certification form for the Third Mandatory Data Collection.¹⁰ On September 22, 2021, WCB/OEA released a Public Notice seeking comment on all aspects of the proposed instructions, template, and certification form.¹¹ After considering the comments and reply comments filed in response to the Public Notice, WCB/OEA released an Order on January 18, 2022 adopting the Third Mandatory Data Collection, and issuing the related instructions, template, and certification form.¹² This Order implemented the WCB/OEA’s proposals, with refinements responding to suggestions offered by the commenters. Under WCB/OEA’s Order, ICS providers will be required to submit the required data using a reporting template to be filed through the Commission’s electronic filing system (ECFS). The 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. The template must be submitted in machine-readable and manipulatable format and may not be converted to a different format, such as a PDF. WCB/OEA also adopted the requirement that a senior executive of each provider certify as to the truthfulness, accuracy, and completeness of the provider’s response to the data collection. In addition, WCB/OEA required all providers to submit audited financial statements or reports, or similar documentation, to the extent they have been produced in the ordinary course of business. Providers must submit these reports for each of 2019, 2020, and 2021 or certify that they have not produced such reports in the ordinary course of business.

We estimate that approximately 20 ICS providers will submit full responses to the Third Mandatory Data collection, consisting of the template and a signed certification of truthfulness, accuracy,

⁵ *2021 ICS Order* at 9618, 9619-20, 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.

⁶ *2021 ICS Order* at 9620-21, 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 9621, para. 225; *see also id.* at 9621-22, para. 226 (directing WCB/OEA to collect, at a minimum, information designed to enable the Commission to meet certain objectives).

⁷ *See id.* at 9622, para. 227.

⁸ *Id.*

⁹ *Id.*

¹⁰ *See* Appx. A.

¹¹ *WCB and OEA Seek Comment on Upcoming Third Mandatory Data Collection for Inmate Calling Services*, WC Docket No. 12-375, Public Notice, DA 21-1192 (WCB/OEA Sept. 22, 2021) (*Third MDC Public Notice*).

¹² *Rates for Interstate Inmate Calling Services*, WC Docket 12-375, Order, DA 22-52 (WCB/OEA Jan. 18, 2022) (*Third MDC Adoption Order*).

and completeness.

Statutory authority for this information collection is contained in sections 1, 4(i)-4(j), 201(b), 218, 220, 225, 255, 276, 403, and 617 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i-j), 201(b), 218, 220, 225, 255, 276, 403, and 617.

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

2. The information requirements set forth below ensure that the Commission has access to the information it needs to fulfill its statutory and regulatory responsibilities, while minimizing the burden on ICS providers. Requiring ICS providers to submit full responses in the template will provide, among other things, data on calls, demand, operations, companies, ICS contracts, facilities served, revenues, site commission payments, and ancillary fees, all of which are essential for the Commission to discharge its statutory mandates regarding ICS.

The requirements that ICS providers submit audited financial statements and a signed certification of truthfulness, accuracy, and completeness of the responses will ensure that the information submitted will provide the Commission with a complete picture of the cost, demand, and revenue data from each provider, in a uniform manner.

The ICS providers' responses will provide extensive information about the ICS industry. The Commission plans to use the collected data to set permanent interstate and international ICS provider-related rate caps that more closely reflect providers' costs of service. In addition, these data will enable the Commission to evaluate and, if warranted, revise the current ancillary service charge caps. The information that ICS providers submit will also provide incarcerated people, their families, their representatives, and the general public with access to information affecting the provision of interstate and international ICS.

3. WCB/OEA have developed instructions aimed at simplifying compliance with, and reducing the burden of, the data collection, as well as a standardized template and certification form for the submission of their responses. WCB/OEA will require providers 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 *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.

6. The Third 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 interstate and international ICS rates, fees, and practices are just and reasonable.

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 the requirements described below on October 5, 2021 (86 FR 54970 (2022)). We received a single comment, submitted by Global Tel*Link Corporation (GTL).¹³ GTL's

¹³ GTL Paperwork Reduction Act Comments (filed Dec. 6, 2021) (GTL PRA Comments). Recently, GTL issued a press release announcing it had changed its name to ViaPath Technologies. See Press Release, ViaPath Technologies, GTL Becomes ViaPath Technologies, Launches Expanded Reentry Services (Jan. 4, 2022), <https://www.viopath.com/news/gtl-becomes-viopath-technologies-launches-expanded-reentry-services/>. For

comment addresses: (a) the estimated burden associated with the collection; (b) the types of data requested; (c) the timeframe for reporting costs; (d) the alleged availability of similar information in the Annual Reports; and (e) the financial data requests.

A. *Estimated Burden Associated with the Collection*

Arguments. In the 60-Day Notice, the Commission estimated that it would take ICS providers 245 hours on average to respond to the data collection. GTL, arguing that the collection will impose a significant burden on providers, claims that this average “grossly underestimate[s]” the amount of time it will take ICS providers to respond to the collection.¹⁴

Response. We disagree that this third one-time data collection is overly burdensome. In the *2021 ICS Order*, the Commission concluded that because of the adverse impact that unreasonably high rates and ancillary service charges have on incarcerated people and those they call, the benefits of conducting a third one-time data collection far outweigh any burden on providers.¹⁵ As implemented, this data collection is fully consistent with the Commission’s assessment, appropriately balancing the need for “detailed and specific instructions and templates” and the desire to avoid unduly burdening providers.¹⁶

GTL’s argument that WCB/OEA “grossly underestimated” the burden of the collection is unavailing. Instead of providing an alternative estimate, GTL simply points out that it provides calling services to over 1,900 facilities and that, even if it took only an hour per facility to respond to the data collection, GTL alone would spend over 1,900 hours preparing its response.¹⁷ As WCB/OEA recognized in adopting the data collection, GTL is the largest calling services provider, “with an estimated market share approaching 50%.”¹⁸ In light of that market share, we would expect that GTL’s total response time would exceed any industry average, regardless of the number of estimated hours.

WCB/OEA has increased the Commission’s average burden estimate from 245 hours on average per provider to 355 hours per provider to account for the additional effort required to produce the additional two years of cost data and the other changes WCB/OEA made in finalizing the collection in response to the record.¹⁹ This new estimate is sufficient to allow ICS providers to report the requisite data and certification in the required format, without unduly burdening them.

B. *Types of Data Requested*

Arguments. GTL contends that certain reporting obligations will be particularly burdensome, while others “will not otherwise yield useful information regarding ICS costs.”²⁰ For example, GTL asserts that it would be a “significant burden on ICS providers and correctional facilities to calculate average daily population (ADP) to reflect the weekly turnover rate contemplated by the proposed [mandatory data collection].”²¹ GTL also argues that, based on the record, there are better indicators of ICS demand that would be less burdensome for ICS providers to report than the number of telephones or

purposes of this Supporting Statement, to avoid confusion with reference to the record, we will continue to refer to this entity as GTL.

¹⁴ GTL PRA Comments at 4.

¹⁵ *2021 ICS Order* at 9619-22, paras. 221-22.

¹⁶ See *MDC Adoption Order* at para. 7.

¹⁷ GTL PRA Comments at 4.

¹⁸ *Third MDC Adoption Order* at 12-14 n.105 (citing *2021 ICS Order*, 36 FCC Rcd at 9550, para. 74) (internal quotations omitted).

¹⁹ See *Third MDC Adoption Order* at n.107.

²⁰ GTL PRA Comments at 5.

²¹ *Id.* at 5-6.

kiosks available in a particular correctional facility.²² GTL claims that WCB/OEA has not demonstrated how the imposition of these reporting requirements justifies the significant burden on ICS providers.²³

Response. GTL's arguments fail to recognize that a number of different factors contribute to providers' costs of providing ICS and that the Commission needs to collect data on each of those factors to calculate those costs. In adopting the data collection, WCB/OEA found no merit to GTL's contention that the number of kiosks or telephones and account generation or termination are inaccurate indicators of demand.²⁴ Instead, WCB/OEA concluded that collecting additional information on facility population metrics and account generation and termination will help the Commission better understand the providers' cost structures, including at relatively small facilities.²⁵ WCB/OEA also concluded that the various categories of data will supplement one another and will help the Commission correct for situations in which some data are unavailable for a particular correctional facility.²⁶ As these findings make clear, the information being collected will be both highly useful in determining the costs of providing ICS and not unreasonably burdensome to produce.

C. Timeframe for Reporting Costs

Argument. GTL argues that the Commission should collect cost data only for calendar year 2021.²⁷ According to GTL, requiring cost data only for calendar year 2021 will minimize the burden on ICS providers to respond to the data collection.²⁸

Response. In the *Third MDC Adoption Order*, after fully considering arguments from providers, including GTL, and public interest groups, WCB/OEA decided to collect cost data for each of calendar years 2019, 2020, and 2021.²⁹ While GTL is, of course, correct that it would be less burdensome on providers to provide cost data only for calendar year 2021, the difference in burden between providing one year versus three years of cost data is marginal and far outweighed by the benefits of collecting data for three years.³⁰ As WCB/OEA recognized, the record before the Commission supported expanding the reporting period from one year to three years for the entire data collection.³¹ Indeed, commenters, including both service providers and public interest groups, had argued that collecting cost data for three years would help prevent atypical, one-time expenses from being considered normal company costs, particularly in light of the on-going COVID pandemic, which they argued would be a potential downside to collecting only a single year's cost data.³² Given these arguments, WCB/OEA's decision to require a three-year reporting period for cost data was entirely reasonable.

²² *Id.* at 6.

²³ *Id.*

²⁴ See *Third MDC Adoption Order* at paras. 11-12. In the *Third MDC Public Notice*, WCB/OEA proposed to collect data on billed minutes, ADP, the number of telephones and kiosks installed, the opening and closing of accounts, admissions, releases, and weekly turnover rate. *Third MDC Public Notice* at 4.

²⁵ *Third MDC Adoption Order* at para. 11.

²⁶ *Id.* at para. 12.

²⁷ GTL PRA Comments at 4.

²⁸ *Id.* at 4-5.

²⁹ *Third MDC Adoption Order* at para. 36. WCB/OEA had proposed to generally collect data for each calendar year from 2019 through 2021, but to limit the collection of cost data to only calendar year 2021. *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

D. Alleged Availability of Similar Information in the Annual Reports

Arguments. GTL argues that the data collection seeks information that the Commission already receives in Annual Reports, such as site commission payments, correctional facilities served, and annual revenues from ICS and ancillary service charges.³³ GTL asserts that the data collection “asks for this information for 2019-2021, all of which the Commission has already received in prior annual reports, or will receive in the 2021 annual reports due in 2022.”³⁴ GTL contends that WCB/OEA must make every effort to “tailor the [mandatory data collection] to avoid duplication of other information received by the Commission in the normal course.”³⁵

Response. The Annual Reports that ICS providers file each year provide the Commission and the public with an overview of the providers’ ICS operations, but fall far short of providing the type of detailed cost data and other information that the Commission will need to determine the costs of providing ICS and related ancillary services and resolve other issues pending in the *ICS* rulemaking.³⁶ To the extent there are overlaps between the Annual Reports and the data collection, the duplications are limited to information (such as provider name, correctional facility name and location, and type of site commissions) that the Commission and the public will need to fully understand and analyze the providers’ data collection responses. The Annual Reports and the data collection serve different purposes and collect very different information, and GTL fails to explain how the data collection could be scaled back without undermining the purposes behind the collection. Given this, GTL’s argument provides no basis for not approving the data collection.

E. Financial Data Requests

Arguments. GTL claims that ICS providers are “non-dominant competitive carriers” that are not required to maintain their records in the same manner required of dominant carriers, and asserts that the proposed data collection requires providers to “produce reports based on accounting and recordkeeping obligations contained in dominant carrier regulation.” GTL contends that WCB/OEA should craft the data collection to allow for flexibility “that reflects how ICS providers are permitted to conduct their business and maintain their books and records” to reduce the related burden.³⁷

Response. The data collection is fully consistent with provider accounting practices, which we understand are consistent with generally accepted accounting principles. In adopting the data collection, WCB/OEA rejected GTL’s arguments that the collection’s requests for financial data are “impossible to satisfy,” are formatted specifically for dominant carriers, and are beyond WCB/OEA’s authority.³⁸ WCB/OEA found that GTL had failed to provide a sufficient explanation for why it would not be able to comply with the data collection and that GTL’s claims were contradicted by other providers’ comments that ICS providers “already have access” to the requested data, and that the data requests are “consistent with existing ICS provider recordkeeping practices.”³⁹ As these findings make clear, any provider proceeding in good faith will be able to respond fully to the data collection.

³³ GTL PRA Comments at 5.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See 2021 ICS Order*, 36 FCC Rcd at 9620, para. 222 (stating that “while the Annual Reports contain useful and relevant marketplace information on providers’ rates and charges, we disagree with the contention that the Annual Reports provide sufficient data to establish just and reasonable interstate inmate calling services rates”); *Third MDC Adoption Order* at n.21

³⁷ GTL PRA Comments at 4.

³⁸ *MDC Adoption Order* at para. 37.

³⁹ *Id.* (citing Securus Comments at 9 and Pay Tel Reply at 3).

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

10. The *Protective Order* in the Commission's ICS proceeding provides confidential treatment for the proprietary information submitted by ICS providers in response to the Commission's directives.⁴⁰ The Commission will treat as presumptively confidential any particular information identified as confidential by the provider in accordance with the Freedom of Information Act and Commission rules. Each confidential document should be stamped and submitted to the Secretary's Office with an accompanying cover letter, as specified by the *Protective Order*. This is standard practice when the Commission seeks completely 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 20.

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

(3) Total number of responses annually: Approximately 20.

(4) Estimated Time per Response: Approximately 350 hours.

20 respondents x 350 hours per response x 1 response per respondent = 7,000 hours.

(5) Total burden: **7,000 hours.**

The Commission estimates that approximately 20 ICS providers will require approximately 350 hours of reporting time to read the instructions, look through existing records, gather and maintain the required data, and complete and review the form. It also includes the time it will take each provider to: (a) submit audited financial statements or reports, or similar documentation, for 2019, 2020, and 2021, to the extent they have been produced in the ordinary course of business; (b) respond to any Commission requirement that the provider clarify or supplement its response to the data collection; and (c) keep all records necessary to implement this collection and make such records available to the Commission upon request.

Approximately 20 respondents x 1 response x 350 hours per response = 7,000 hours.

(6) Total estimate of "in house" cost to respondents: **\$406,070.**

(7) Explanation of the calculation:

The Commission estimates that approximately 20 ICS providers will be subject to this one-time reporting requirement.

We assume that respondents will use personnel comparable in pay to GS 13/Step 5 earning \$58.01 per hour.

Thus, 7,000 hours per year x \$58.01 = \$406,070.

b. Certification Requirement:

(1) Number of respondents: Approximately 20.

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

(3) Total number of responses annually: Approximately 20.

⁴⁰ *Rates for Inmate Calling Services*, WC Docket 12-375, Protective Order, 28 FCC Rcd 16954 (WCB 2013) (*Protective Order*); see also *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, 35 FCC Rcd 9267 (WCB 2020) (mandating non-confidential treatment of certain types of information).

(4) Estimated Time per Response: Approximately 5 hours.

20 respondents x 5 hours per response x 1 response per respondent = 100 hours.

(5) Total burden: **100 hours**.

The Commission estimates that approximately 20 ICS providers will require 5 hours of reporting time to complete the certification form.

Approximately 20 respondents x 1 response x 5 hours per response = 100 hours.

(6) Total estimate of “in house” cost to respondents: **\$12,500**.

(7) Explanation of the calculation:

The Commission estimates that approximately 20 carriers will be subject to this one-time reporting requirement.

We assume that respondents will use approximately 5 hours of an officer of the company’s time (rate of \$125 per hour) to satisfy the requirement.

Thus, 100 hours per year x \$125 per hour = \$12,500.

Total Respondents: 20

Total Responses: 20

Total In-House Costs: \$406,070 + \$12,500 = \$418,570.

Total Annual Burden Hours: 7,000 + 100 = 7,100 hours.

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

(1) 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.

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

(3) 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 20 respondents, 20 responses, and 7,100 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, any confidential information submitted by ICS providers will be treated in accordance with 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. Since the 60-Day Notice was published the Federal Register, on October 5, 2021 (86 FR 54970), the Commission has changed the title of this new information collection from “Inmate Calling Services (ICS) 2021 One-Time Data Collection, WC Docket No. 12-375, FCC 21-60” to “Inmate Calling Services (ICS) 2022 One-Time Data Collection, WC Docket No. 12-375, FCC 21-60.” In addition, the

estimated average burden has increased from 245 hours to 355 hours, resulting in an overall increase in the total burden hours, from 4,900 to 7,100. These changes were announced in the 30-Day Notice published in the Federal Register on January 21, 2022 (87 FR 3299), and are reflected in this 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.