

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

In the Matter of)
)
Rates for Interstate Inmate Calling Services) WC Docket No. 12-375

ORDER

Adopted: June 24, 2022

Released: June 24, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. By this Order, the Wireline Competition Bureau (Bureau) revises the instructions, reporting template, and certification form for the annual reports submitted by providers of calling services to incarcerated people.¹ The revisions we implement today largely adopt the proposals contained in our *December 2021 Public Notice*,² with certain minor refinements and reevaluations responsive to comments filed in response to that *Public Notice*.

II. BACKGROUND

2. The Commission requires inmate calling services (ICS) providers to make annual filings to help it monitor and track trends in the ICS marketplace, increase provider transparency, and promote compliance with the Commission's ICS rules.³ Pursuant to its delegated authority,⁴ the Bureau created standardized reporting templates for the annual report (FCC Form 2301(a)) and a related certification of accuracy (FCC Form 2301(b)), as well as instructions to guide providers through the reporting process.⁵ In 2020, the Bureau amended the instructions and template for the annual report in order to improve the type and quality of the information collected.⁶

3. In the *2021 ICS Order*, the Commission revised its ICS rules by adopting, *inter alia*, lower interim rate caps for interstate ICS calls, new interim rate caps for international ICS calls, and a rate cap structure that requires ICS providers to differentiate between legally mandated and contractually required site commissions.⁷ These rule changes necessitated further changes to the annual reporting and

¹ 47 CFR § 64.6060(a).

² *Wireline Competition Bureau Seeks Comment on Revisions to Annual Reporting And Certification Requirements for ICS Providers*, WC Docket No. 12-375, Public Notice, DA 21-1583 (WCB Dec. 15, 2021) (*December 2021 Public Notice* or *Public Notice*).

³ *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, 12769, 12892, paras. 9, 267-68 (2015) (*2015 ICS Order*); see also 47 CFR § 64.6060(a).

⁴ *2015 ICS Order*, 30 FCC Rcd at 12891, para. 267.

⁵ See generally ICS Annual Reporting Form (2017-2019), <https://www.fcc.gov/general/ics-data-collections>; ICS Annual Reporting Certification Form (2017-2019), <https://www.fcc.gov/general/ics-data-collections>.

⁶ *Wireline Competition Bureau Announces OMB Renewal of Information Collection Concerning Inmate Calling Services*, WC Docket No. 12-375, Public Notice, 35 FCC Rcd 1456 (WCB 2020) (*2020 OMB Renewal Public Notice*); Instructions for Completing the Inmate Calling Services Annual Reporting Form (FCC Form 2301), <https://docs.fcc.gov/public/attachments/DOC-362551A2.docx> (2020 Annual Reporting Instructions).

certification templates, which the Bureau proposed in the *December 2021 Public Notice*. In response to the *Public Notice*, the Bureau received comments from ICS providers, public interest advocates, and other interested parties.⁸ Several commenters express support for the revisions proposed in that *Public Notice*.⁹

III. DISCUSSION

4. Pursuant to our delegated authority, we adopt the instructions and templates for annual reports and certifications for ICS providers attached hereto as Appendix A.¹⁰ These instructions and templates largely follow the proposals in our *December 2021 Public Notice*, with a small number of revisions to enhance the value and usefulness of the annual reports, the majority of which reduce existing or proposed reporting burdens.¹¹ We expect the detailed instructions and templates we adopt to result in reports that provide the Commission, its state counterparts, and the public with a clearer, more complete picture of ICS providers' operations than was available under prior annual reports, without unduly increasing burdens on providers.¹² In particular, the changes we make to the instructions and templates will make ICS providers' rates, ancillary service charges, and practices more transparent and, through that increased transparency, help ensure compliance with the Commission's ICS rules.¹³

A. Specific Data and Information Inquiries

5. The reporting requirements we adopt in this Order cover the general categories of information we proposed in the *December 2021 Public Notice*. These categories include the submission of information on facilities served; interstate, intrastate, and international ICS rates; ancillary service charges; site commissions; and disability access, among other matters. We find that these categories

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⁷ *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*); 47 CFR § 64.6030(d)-(e).

⁸ We received comments or reply comments in response to the *December 2021 Public Notice* from the Colorado Department of Regulatory Agencies (Colorado Commission); Global Tel*Link Corporation (GTL); NCIC Inmate Communications (NCIC); Prison Policy Initiative, Inc. (PPI); Securus Technologies, LLC (Securus); and the National Association of State Utility Consumer Advocates and PPI (NASUCA and PPI). Recently, GTL issued a press release announcing it had changed its name to ViaPath Technologies. *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, DA 22-52, at 2, n.11; (WCB/OEA 2022) (*Third Mandatory Data Collection Order*); Press Release, ViaPath Technologies, GTL Becomes ViaPath Technologies, Launches Expanded Reentry Services (Jan. 4, 2022), <https://www.viapath.com/news/gtl-becomes-viapath-technologies-launches-expanded-reentry-services/>. For purposes of this Order, to avoid confusion with reference to the record, we will continue to refer to this entity as GTL.

⁹ See, e.g., PPI Comments at 1; NASUCA and PPI Reply at 2; see also Securus Comments at 1 (welcoming our effort “to bring further transparency to ICS, including site commissions,” while offering “recommendations designed to appropriately balance the need for information without unduly burdening providers”).

¹⁰ Appendix A provides the instructions as well as links to the templates. The reporting template consists of a Word document and Excel spreadsheets. For simplicity, we refer to these respective portions of the reporting template as the Word template and the Excel template.

¹¹ These revisions reflect full consideration of the record received in response to that *Public Notice*, including potential burdens on ICS providers, see GTL Comments at 2-3; NCIC Comments at 3, and particular categories of information to be collected, among other matters. See Securus Comments at 4-7; NCIC Comments at 2-6; PPI Comments at 2-4; NASUCA and PPI Reply at 2.

¹² See, e.g., PPI Comments at 5 (asserting that “the changes proposed by the Bureau represent a major improvement in the form of ICS annual reports”). See generally *Third Mandatory Data Collection Order* at 3, para. 7.

¹³ See *December 2021 Public Notice* at 1 (citing the *2015 ICS Order* when identifying the purposes served by the annual reporting and recordkeeping requirements); see also *2015 ICS Order*, 30 FCC Rcd 12763 at 12892, paras. 267-68.

strike the appropriate balance between providing clear and useful information about ICS providers, and minimizing the associated reporting burdens.¹⁴

1. Reporting Information on ICS Rates

6. We adopt the reporting requirements for interstate, international, and intrastate ICS rates as proposed, with minor revisions, as discussed below. In the *December 2021 Public Notice*, we proposed to require every provider to submit the highest, average, and year-end interstate, international, and intrastate ICS rates charged at each of its facilities, as well as information regarding providers' international termination charges.¹⁵ Given that "providers may charge one rate for the initial minute of a call and another for each successive minute" and may "frequently adjust their rates" during the course of a year,¹⁶ we find that each of these data points is necessary for us to fully understand providers' rates. Although some commenters contend that our proposed collection would be unnecessarily burdensome,¹⁷ our revised approach will significantly reduce the burdens on providers, and we find that detailed information regarding providers' interstate, international, and intrastate ICS rates is needed to ensure that the annual reports enable the Commission, its state counterparts, and the public to evaluate and effectively monitor interstate, international, and intrastate ICS rates.

7. We decline to reduce the categories of rate data we collect. Some commenters complain that the rate data we proposed would be overly burdensome: one argues against collecting the highest and average rates charged for a 15-minute call during the calendar year at each facility;¹⁸ another alleges that the information we seek surrounding international termination charges in addition to the rate information we seek for international rates—including the highest per-minute rate, first minute rate, and additional minute rate—will especially burden those providers that serve facilities with average daily populations of less than 1,000.¹⁹ These arguments fail to recognize that implementation of our proposals will significantly reduce the existing rate reporting burdens on providers, and our decision accounts for the benefit of collecting this rate information and the reduced burden on providers. Under the current requirements, providers must report *every* rate they charged during the calendar year,²⁰ a significantly broader undertaking than simply reporting highest, average, and year-end rates. Limiting the required reported rates to only the highest, average, and year-end rates thus constitutes a winnowing of the providers' current rate reporting responsibilities. Given our decision to no longer collect data on every single rate which providers have charged over the course of a year, information on each of these three

¹⁴ We note that the categories of information we request are generally consistent with, but not identical to, those ICS providers in the state of Colorado are required to address in quarterly reports to the Colorado Commission. *See* Colorado Commission Comments at 1-2.

¹⁵ *December 2021 Public Notice* at 3.

¹⁶ *Id.* at 3, nn.12, 14.

¹⁷ GTL Comments at 2-3 (claiming these changes would impose "substantial unnecessary burdens on providers"); NCIC Comments at 1-4 (contending that the proposals with regard to international rates are substantially more demanding than what the Commission's international rate cap rule would require); *see also* Securus Reply at 1 (arguing that "the Bureau should minimize and eliminate requirements to report data that is difficult or onerous for the provider to compile" without identifying what it finds to be difficult or onerous).

¹⁸ GTL Comments at 3 (arguing that year-end rates will show whether providers are in compliance with the Commission's rate cap rules).

¹⁹ NCIC Comments at 3.

²⁰ *See* 2020 Annual Reporting Instructions at 4-7 (requiring providers to identify the highest interstate, intrastate, and international rates charged and to identify each interstate, intrastate, and international rate charged that differs from the highest rate). As we explained in the *December 2021 Public Notice*, certain providers may charge varying rates throughout a call, and obtaining the averages based on 15-minute calls offers a valuable way of summarizing and comparing differences in fluctuating rates. *December 2021 Public Notice* at 3, n.12.

measures is essential to understand how providers' rates vary over the course of a year and the impact of those variations on consumers.

8. In the *December 2021 Public Notice*, we also proposed to require providers to report international rate information separately for each facility served.²¹ One commenter points out, however, that providers typically charge the same international rates for all facilities covered under the same contract and that it is unnecessary to require providers to report identical international rate information for each of several facilities covered under the same contract.²² We agree and therefore allow providers to report international rate information at the contract level, as opposed to the facility level, in most situations. This approach should further reduce the reporting burden on providers. Where, however, a provider charges different international rates for calls from facilities covered by the same contract, it must report its international rate data on a facility-by-facility basis to ensure such differences are captured.

9. We also revise the instructions and reporting template to require that detailed international rate information be reported only for countries to which calls were actually placed from a given facility during the reporting period, and to report the web address at which international rate information can be found for other countries to which no calls were placed. To ensure that the annual reports provide complete information regarding the rates at which providers offered international ICS, we require providers to provide links to the publicly available webpages that capture their international ICS offerings for service to other counties as of the end of the reporting period. These changes provide clarity as to, how we expect providers to list their international rates.²³ They also significantly reduce the burdens below those providers faced under our prior requirements.²⁴

10. We decline to limit the collection of information surrounding international rates to only the rate that was charged for the domestic portion of international calls. In the *December 2021 Public Notice*, we proposed to require providers to report any charges they assessed on consumers to terminate international calls as well as the amounts they paid to their underlying international service providers for such termination.²⁵ One commenter claims providers lack control over third-party termination rates and therefore should not be required to report them.²⁶ We do not agree. The rules adopted by the Commission in the *2021 ICS Order* permit each provider to include, in its charges for an international call, the average per-minute amount the provider paid its underlying providers to terminate international calls to an international destination during the preceding calendar quarter.²⁷ The rules also require these charges to be itemized on a customer's bill.²⁸ Consequently, information on both the amounts passed through and the amounts paid to third parties is essential to evaluate whether providers' international rates comply with the Commission's rules.

2. Reporting Ancillary Service Charges Information

11. We adopt the reporting requirements for ancillary service charges assessed by ICS providers as proposed, with certain revisions, as discussed below. In the *December 2021 Public Notice*,

²¹ *December 2021 Public Notice* at 3.

²² Securus Comments at 6.

²³ *Id.* (asking whether providers will be required to list all international rates, including rates to countries that were not called during the reporting period).

²⁴ 2020 Annual Reporting Instructions at 6 (requiring providers to report, on a facility-by-facility basis, every rate at which they offered international services during the reporting period).

²⁵ *December 2021 Public Notice* at 3.

²⁶ GTL Comments at 4.

²⁷ 47 CFR § 64.6030(e).

²⁸ 47 CFR § 64.6110(c).

we proposed to require every provider to report, on a facility-by-facility basis, certain information about any ancillary services charges it assesses and to include a narrative explanation concerning any methodologies it uses to allocate those charges among multiple facilities served under a single contract.²⁹ We find that the requested information is necessary to evaluate whether providers' ancillary services charges comply with the Commission's ancillary services charge rules and that submitting this information will not place an undue burden on providers.³⁰

12. We agree that the submission of additional information related to specific third-party ancillary service charges that providers are permitted to pass-through to consumers under the Commission's current rules is warranted.³¹ To that end, we require providers to identify whether their ancillary service charges are fixed or variable.³² We also require providers to identify each third party whose fees for single-call and related service charges or third-party financial transactions were passed through to ICS consumers, and to state the number of times such charges were assessed, and the total amounts of such charges passed through to consumers.³³ To be clear, where a contract involves pass-through charges from multiple third parties, we require providers to identify each third party and to itemize the corresponding charges separately.³⁴ These changes will help ensure that ICS providers are not using third-party contracts to circumvent the Commission's limits on ancillary services charges or improperly pass through third-party fees in violation of the *2021 ICS Order*. In addition, these changes will add clarity as to how the different ancillary service charges are structured and assessed.

13. Similarly, we agree with the commenter who argues it will be useful to require providers to provide a narrative explanation of how they calculate variable service charges.³⁵ This narrative will provide the Commission and consumers valuable information about third-party transaction fees. Further, we expect that providing this information should impose only a minimal, if any, additional burden on providers because we understand relatively few ancillary services fees are variable.³⁶ The benefits of obtaining more detailed information about how ancillary service charges are assessed outweighs any minor increase in burden.³⁷

²⁹ *December 2021 Public Notice* at 3.

³⁰ 47 CFR §§ 64.6000(a), 64.6020.

³¹ PPI Comments at 3-4.

³² *Id.* at 3 (requesting that ICS providers specify whether the fee assessed for each ancillary service charge is fixed or variable based on the transaction amount or other factors).

³³ 47 CFR § 64.6020(b)(2) (limiting charges for single-call and related services to “the exact transaction fee charged by the third-party provider, with no markup, plus the adopted per-minute rate” for the call); 47 CFR § 64.6020(b)(5) (limiting charges for third-party financial transactions to “the exact fees, with no markup that result from the transaction); PPI Comments at 3-4. Although PPI focuses on the pass through of third-party financial transaction fees, *see id.*, we find that its arguments apply with equal force to the pass through of third party single-call and related services fees.

³⁴ PPI Comments at 3; *see also 2021 ICS Order*, 36 FCC Rcd at 9612-13, para. 209 (emphasizing that “[p]roviders may no longer simply pass through third-party financial transaction fees, including those related to single-call services, to calling services consumers”); *id.* at 9615-16, paras. 214-16 (discussing how revenue-sharing agreements can lead to indirect markups on third-party transaction fees and otherwise circumvent the Commission's limits on ancillary services fees).

³⁵ *See* PPI Comments at 3 (explaining that this step allows for easier data analysis because provider responses may vary based on the structure of the underlying transaction).

³⁶ *See id.* at 4.

³⁷ *See* 47 CFR § 64.6060(a)(2) (requiring providers to report “Current Ancillary Service Charge amounts and the instances of use of each”); *see also* FCC, *Calling Services for Incarcerated People, Third Mandatory Data Collection*, Instructions at 25-29, 42-45, http://www.fcc.gov/sites/default/files/2022_mdc_-_instructions_to_third

3. Reporting Site Commission Information

14. We adopt the reporting requirements we proposed concerning site commissions, with minor revisions. In the *December 2021 Public Notice*, we proposed to require providers to report their average total monthly site commission payments on a facility-by-facility basis and to separate those payments between legally mandated and contractually prescribed site commission payments, consistent with the Commission's rules.³⁸ We also proposed to require providers to subdivide both types of payments between monetary and in-kind payments and, within those subdivisions, to report the portions of the payments that were either fixed or variable.³⁹ We disagree with those commenters that contend that this level of disaggregated reporting would impose onerous burdens on providers and would not "serve the public interest."⁴⁰ We find that our disaggregated site commission reporting requirements will provide benefits—allowing us to collect more complete and detailed information for analysis regarding the providers' site commission payments—that far outweigh any increased burden on providers. Moreover, the argument that the Commission has not previously required providers to report in-kind site commission payments is incorrect.⁴¹ The existing instructions require providers to report both fixed and variable site commission payments, and defines "site commissions" as "any form of monetary payment, exchange of services or goods, fee, technology allowance, or product that a provider of ICS may pay, give, donate, or otherwise provide to an entity with which the provider of ICS enters into an agreement to provide ICS, a governmental agency that oversees a correctional facility, the city, county, or state where a facility is located, or an agent of any such facility."⁴²

15. In the *December 2021 Public Notice*, we proposed to require each provider to submit a narrative response regarding certain aspects of its in-kind site commission payments.⁴³ We revise this instruction to also specify that the provider describe the valuation methodology it used to determine the value of its in-kind site commissions reported.⁴⁴ We find this additional requirement necessary because

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[mandatory data collection 1.18.2022.docx](#) (last visited June 23, 2022) (*Third MDC Instructions*) (linked to by the *Third Mandatory Data Collection Order* at 20, Appx. A, Third Mandatory Data Collection Instructions and Template) (requiring more specific information regarding ancillary services).

³⁸ *December 2021 Public Notice* at 4. We decline to implement one commenter's request that we essentially modify the definition of "legally mandated" site commissions as beyond the scope of this Order. See NCIC Comments at 6 (requesting that a site commission be deemed legally-mandated until a state actually prohibits them). This Bureau-level order is limited to revising the instructions and reporting template for ICS providers' annual reports and certifications and not appropriate for modifying Commission-adopted definitions. See *Third Mandatory Data Collection Order* at 3-4, para. 8 (recognizing that an order setting the specific requirements for a data collection "is not the proper administrative vehicle" for changing Commission rules) (internal quotation marks and citation omitted); PPI Reply at 2.

³⁹ *December 2021 Public Notice* at 4.

⁴⁰ GTL Comments at 4-5 (arguing that it would be "extremely daunting" for providers to distinguish between legally mandated and contractually prescribed site commissions and that the burdens of identifying the monetary value of in-kind site commissions "outweigh any benefit to the purpose of the Annual Report and do not serve the public interest"); NCIC Comments at 4-5 (claiming the burden of collecting the proposed disaggregated site commission data will be onerous, and stating that "[e]ven if each ICS provider was able to collect the information in a format that would permit an apples-to-apples comparison, the collection obligations relating to this information for ICS providers will be onerous, and there will be minimal benefit for ICS customers or FCC staff"). But see PPI Reply at 1-3 (finding the proposed site commissions reporting to be clear, reasonable, and non-burdensome).

⁴¹ See GTL Comments at 5.

⁴² 2020 Annual Reporting Instructions at 8 (defining site commissions); see also 47 CFR § 64.1000(t) (defining site commissions as including "in-kind payments").

⁴³ *Annual Reports Proposed Instructions* at 21.

in-kind site commission payments encompass a wide variety of goods or services, such as items developed through in-house labor, which may lack easily ascertainable monetary values.⁴⁵

16. However, we decline to adopt other suggestions that would either increase the burden on reporting providers without any offsetting benefit or unduly limit the information collected on in-kind site commissions. For example, it is not clear how a specific requirement that providers report in-kind site commissions on both the adjusted basis (i.e., book value) and the fair market value of the transferred property would produce sufficiently useful information to justify the additional burden on providers.⁴⁶ On the other hand, simply requiring providers to “identify any in-kind site commissions and describe how those payments are valued” could allow providers to avoid imputing an actual dollar value for their in-kind site commissions, resulting in insufficient visibility into those transactions.⁴⁷ On balance, we find that our adopted approach, requiring providers to report the value of in-kind site commissions and to describe the valuation methodology they used, will provide the most useful information without unduly burdening providers.

4. Disability Access And Related Considerations

17. We next revise the proposed instructions and reporting template to more precisely target the most necessary information related to providers’ disability access services. In the *December 2021 Public Notice*, we proposed to require every provider to report certain information regarding any ancillary services charges imposed for, or in connection with, TTY-based calls at each facility the provider served during the reporting period.⁴⁸ According to the record, this proposal should be narrowed slightly to track only the ancillary service fees a provider charges specifically in connection with the access and use of TTY equipment or other disability-related technologies.⁴⁹ We agree, and therefore revise the instructions to require that providers report, on a facility-by-facility basis, any ancillary service charges they impose specifically for accessing and using TTY equipment and other disability-related ICS technologies.⁵⁰ This change will provide the Commission and the public with a more accurate view of providers’ ancillary service charges specifically in connection with disabilities access than would have been available under our original proposal.

5. Miscellaneous

18. We decline at this time to use the annual reporting process to obtain information about ICS providers’ bundled contract offerings (i.e., contracts including voice, video, text, emails, or other

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⁴⁴ *Annual Reports Proposed Instructions* at 21 (requiring a narrative response regarding some aspects of in-kind site commissions).

⁴⁵ See, e.g., PPI Reply at 3.

⁴⁶ PPI Comments at 4-5 (proposing such reporting, but acknowledging that the concept of fair value “depends on somewhat malleable concepts and is thus potentially susceptible to some degree of manipulation”); Securus Reply at 2 (arguing that the Commission should allow providers to use valuation methodologies that conform to their internal accounting); see also Financial Accounting Standards Board, *Accounting Standards Codification, Basic View Master Glossary*, <https://asc.fasb.org/glossary&letter=F> (last visited June 23, 2022) (defining fair value as “[t]he price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date”).

⁴⁷ See Securus Reply at 2 (proposing such limited reporting).

⁴⁸ *December 2021 Public Notice* at 4.

⁴⁹ Securus Comments at 7. Securus maintains that this proposal incorrectly assumes that providers maintain separately identifiable accounts for customers with disabilities. *Id.*

⁵⁰ This instruction should not be construed to imply that any such charges are permitted by the Commission’s rules. See 47 CFR § 64.6040(b) (“No Provider shall levy or collect any charge or fee for TRS-to-voice or voice-to-TTY calls.”).

services), as two parties urge.⁵¹ We find that the proposed additional categories of information would not advance the purposes of the annual reporting requirement enough to outweigh the potential added burdens on ICS providers.⁵²

19. We also decline to adopt a request to remove questions about the geographic coordinates of facilities.⁵³ We find geographic location data to be useful, and in some cases necessary, to accurately identify the location of certain facilities.⁵⁴ And, because each provider's response to the Third Mandatory Data Collection must include the geographic coordinates of each facility it serves, reporting that previously-determined information in the annual reports can hardly be characterized as imposing a burden on providers.⁵⁵

6. Confidential Information

20. We also decline to implement one commenter's suggestion that we specifically require providers to submit a detailed motion if they redact information from the public version of their annual reports.⁵⁶ Any such action would constitute a departure from the Commission's long-established procedure under which provider "[f]ilings containing legitimate confidential information can be appropriately redacted and filed pursuant to the guidance and limitations set forth in the [ICS] *Protective Order* and the standard set forth in section 0.459 of the Commission's rules."⁵⁷ We have previously explained that "any request for confidential treatment must adhere to the standard set forth in section 0.459(b) of the Commission's rules, as applied in the *ICS Annual Report Transparency Order*."⁵⁸ We find no reason to disturb these existing procedures based on the record before us.

B. Effective Date and Implementation Date

21. Because this Order imposes new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA),⁵⁹ its effective date will be delayed indefinitely pending approval by the Office of Management and Budget (OMB). In the event of such approval, the Commission will publish a document in the Federal Register announcing OMB approval and establishing the date of such publication as the effective date of this Order.

⁵¹ NASUCA and PPI Reply at 3.

⁵² See *2015 ICS Order*, 30 FCC Rcd at 12891-92, paras. 266-71 (directing that the annual reports should be limited in scope to ease the burden on providers while providing necessary transparency on certain defined aspects of the providers' operations); see also 47 CFR § 64.6060.

⁵³ Securus Comments at 4 ("Securus does not obtain, or have any need to obtain, geographical coordinates for the facilities it serves").

⁵⁴ See *2021 ICS Order*, 36 FCC Rcd at 9706, Appx. E, paras. 21-22 (discussing the difficulty of determining facilities' geographical coordinates from street address information); PPI Reply at 4-5 (recognizing that geographical coordinate data "allow[s] researchers to present rate analyses in various spatial displays, which in turn can help policy makers easily grasp voluminous data sets").

⁵⁵ See *Third MDC Instructions* at 36, Item III.D.2.a(5).

⁵⁶ PPI Comments at 1-2.

⁵⁷ *Third Mandatory Data Collection Order* at 10, para. 27 (citing *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Protective Order, 28 FCC Rcd 16954 (WCB 2013); see also *id.* at n.79 (citing 47 CFR § 0.459(b); 47 CFR § 0.459(c) (specifying that "[c]asual requests [for confidential treatment] (including simply stamping pages 'confidential') . . . will not be considered").

⁵⁸ Wireline Competition Bureau Reminds Providers of Inmate Calling Services of the April 1, 2022 Deadline for Annual Reports and Certifications, WC Docket No. 12-375, Public Notice, DA 22-127 (WCB Feb. 2, 2022) (*2022 Reporting Deadline Public Notice*) (citing *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, 35 FCC Rcd 9267 (WCB 2020) (*ICS Annual Report Transparency Order*)).

⁵⁹ Public Law 104-13.

22. We expect that this effective date will be established long before the April 2023 due date for providers' next annual reports and certifications for calendar year 2022.⁶⁰ Thus, providers should expect that, absent further Bureau direction, the revisions adopted in this Order will apply to all subsequent annual report and certification filings.⁶¹ Providers will have ample time to collect the information needed for the revised annual reports due in April 2023.

IV. PROCEDURAL MATTERS

23. *Supplemental Final Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁶² we have prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to this Order.⁶³ The Supplemental FRFA is set forth in Appendix B.

24. *Final Paperwork Reduction Act Analysis.* The Order contains new or modified information collection requirements subject to the PRA. It will be submitted to OMB for review under section 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. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198; *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.⁶⁴ We have assessed the effects of the requirements for annual reports and certifications on small business concerns, including those having fewer than 25 employees, and find that to the extent such entities are subject to those requirements, any further reduction in the burden of the collection would be inconsistent with the objectives behind the collection.

25. *Congressional Review Act.* This Order is non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Order to the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 155(c), 201(b), 218, 220, 276, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 155(c), 201(b), 218, 220, 276, and 403, and the authority delegated pursuant to sections 0.91, 0.201(d), and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.201(d), 0.291, this Order IS ADOPTED.

⁶⁰ An expected April 2023 implementation date moots commenter concerns premised on the assumption that the revisions would become effective before providers had to submit their 2022 annual reports. *See, e.g.,* GTL Comments at 4-5 (discussing the burden of distinguishing between legally-mandated and contractually prescribed site commissions for the period prior to October 26, 2021); Securus Comments at 4-5 (discussing how data reported for 2021 would be skewed by the implementation of the new interstate and international rate cap rules). When we proposed the revisions to the instructions and templates for the annual reports in the *December 2021 Public Notice*, the Bureau expected that such changes would receive OMB approval under the PRA and take effect in time for their use in the April 2022 filings. *Annual Report Public Notice* at 2. This did not occur. Consequently, we no longer need separate instructions for the period between January 1, 2021 and October 26, 2021 when certain of the rules adopted in the *2021 ICS Order* became effective. We have therefore revised the instructions and templates accordingly.

⁶¹ *See 2022 Reporting Deadline Public Notice* at 1.

⁶² *See* 5 U.S.C. §§ 601-612.

⁶³ *See* 5 U.S.C. § 604. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

⁶⁴ *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, 8536-37, para. 146 (2020).

27. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

APPENDIX A

Annual Reporting and Certifications Instructions and Template

The instructions and templates for the Annual Report are available at this link: [Annual Report Instructions](#).

APPENDIX B
Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *2021 ICS Notice*, released in May 2021.² The Commission sought written public comment on the proposals in that Notice, including comments on the Supplemental IRFA. The comments received are addressed below. This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Order

2. In this Order, the Commission's Wireline Competition Bureau (the Bureau) adopts revisions to the instructions and templates for the annual reports and certifications submitted by providers of ICS. In the *2021 ICS Order*, the Commission revised its ICS rules by adopting, *inter alia*, lower interim rate caps for interstate ICS calls, new interim rate caps for international ICS calls, and a rate cap structure that requires ICS providers to differentiate between legally mandated and contractually required site commissions. The rules implemented by the *2021 ICS Order* necessitate further changes to the annual reporting and certification templates, which the Bureau proposed in the *December 2021 Public Notice*.

3. Pursuant to its delegated authority, the Bureau has prepared updates to the annual reporting and certification templates and is issuing the Order to adopt all aspects of these documents.

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

4. There were no comments filed that specifically addressed the proposed rules and policies in the Supplemental IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.⁴

6. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Annual Report and Certification Requirements Will Apply

7. 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 annual report and certification requirements. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has

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

² *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 9688-96 (2021) (*2021 ICS Notice*).

³ See 5 U.S.C. § 604.

⁴ 5 U.S.C. § 604(a)(3).

⁵ See 5 U.S.C. § 601(6).

the same meaning as the term “small-business concern” under the Small Business Act.⁶ 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.⁷

8. Regulatory Flexibility Analyses were incorporated in the *2020 ICS Notice* and *2021 ICS Order*.⁸ In those analyses, the Commission described in detail the small entities that might be affected. Accordingly, in this Order, for the Supplemental FRFA, we hereby incorporate by reference the descriptions and estimates of the number of small entities from these previous Regulatory Flexibility Analyses.

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

9. The annual report and certification requirements direct 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 and to certify as to their compliance with relevant Commission rules. The Bureau estimates that approximately 20 ICS providers will be subject to this reporting requirement. In the aggregate, the Bureau estimates that responses will take approximately 3,740 hours.

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

10. 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.”⁹

11. The annual report and certification requirements impose a recurring obligation on providers. Because the Commission’s *2021 ICS Order* requires all ICS providers to submit annual reports and certifications, the collection will affect smaller as well as larger ICS providers. The Bureau has taken steps to ensure that the reporting template is competitively neutral and not unduly burdensome for any set of providers and has considered the economic impact on small entities, as identified in comments filed in response to the *December 2021 Public Notice*, in finalizing the instructions and reporting templates for the annual reports and certifications. In response to the comments, the Bureau has refined certain aspects of the instructions and reporting templates. These modifications avoid unduly burdening responding providers while ensuring that providers have sufficiently detailed and specific instructions to respond to the data collection.

⁶ *See id.* § 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.”

⁷ *See* 15 U.S.C. § 632.

⁸ *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, 8547, Appx. D (Initial Regulatory Flexibility Analysis) (*2020 ICS Notice*); *2021 ICS Order*, 36 FCC Rcd at 9688-96, Appx. C (Supplemental Final Regulatory Flexibility Analysis).

⁹ 5 U.S.C. § 603(c)(1)-(4).

G. Report to Congress

12. The Commission will send a copy of the Order, including this Supplemental FRFA, in a report a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.¹⁰ In addition, the Commission will send a copy of the Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order, and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.¹¹

¹⁰ *Id.* § 801(a)(1)(A).

¹¹ *See id.* § 604(b).