

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

In the Matter of	)	
	)	
Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act	)	WC Docket No. 23-62
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375
	)	

**ORDER**

**Adopted: July 26, 2023**

**Released: July 26, 2023**

By the Chief, Wireline Competition Bureau, and the Chief, Office of Economics and Analytics:

**I. INTRODUCTION**

1. By this Order, the Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) adopt instructions, a reporting template,<sup>1</sup> and a certification form to implement the 2023 Mandatory Data Collection relating to incarcerated people’s communications services (IPCS). Our actions today are taken pursuant to the authority delegated to WCB and OEA by the Commission and largely implement the proposals set forth in the *2023 IPCS Mandatory Data Collection Public Notice*,<sup>2</sup> with refinements and reevaluations responsive to record comments.

**II. BACKGROUND**

2. On January 5, 2023, the President signed into law the Martha Wright-Reed Just and Reasonable Communications Act (Martha Wright-Reed Act or Act),<sup>3</sup> which expanded the Commission’s statutory authority over communications between incarcerated people and the non-incarcerated, including “any audio or video communications service used by inmates . . . regardless of technology used.”<sup>4</sup> The new Act also amends section 2(b) of the Communications Act of 1934, as amended (Communications Act), to make clear that the Commission’s authority extends to intrastate as well as interstate and international communications services used by incarcerated people.<sup>5</sup>

3. The Martha Wright-Reed Act directs the Commission to “promulgate any regulations necessary to implement” the Act, including its mandate that the Commission establish a “compensation plan” ensuring that all rates and charges for IPCS “are just and reasonable,” not earlier than 18 months

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<sup>1</sup> 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.

<sup>2</sup> *WCB and OEA Seek Comment on Proposed 2023 Mandatory Data Collection for Incarcerated People’s Communication Services*, WC Docket Nos. 23-62, 12-375, Public Notice, DA 23-355 (WCB/OEA Apr. 28, 2023) (*2023 IPCS Mandatory Data Collection Public Notice* or *Public Notice*).

<sup>3</sup> Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156; 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d).

<sup>4</sup> Martha Wright-Reed Act § 2(a)(2), (b).

<sup>5</sup> *Id.* § 2(c).

and not later than 24 months after the Act's January 5, 2023 enactment date.<sup>6</sup> The Act requires the Commission to consider, as part of its implementation, the costs of "necessary" safety and security measures, as well as "differences in costs" based on facility size or "other characteristics."<sup>7</sup> It also allows the Commission to "use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider" in determining just and reasonable rates.<sup>8</sup>

4. The Martha Wright-Reed Act contemplates an additional data collection by requiring or allowing the Commission to consider certain types of other costs necessary to its implementation. Prior to the enactment of the Martha Wright-Reed Act, the Commission had sought provider data related to audio communications services provided to incarcerated persons on three occasions, as part of its ongoing efforts to establish just and reasonable rates for those services, while ensuring that providers are fairly compensated for such services.<sup>9</sup> To ensure that it will have the data it needs to meet its substantive and procedural responsibilities under the Act, the Commission delegated authority to WCB and OEA to "update and restructure" its most recent data collection (the Third Mandatory Data Collection) "as appropriate in light of the requirements of the new statute."<sup>10</sup> This delegation requires that we collect "data on all incarcerated people's communications services from all providers of those services now subject to" the Commission's authority, including, but not limited to, requesting "more recent data for additional years not covered by the [Third Mandatory Data Collection]."<sup>11</sup>

5. In accordance with this delegation, WCB and OEA developed proposals for the 2023 Mandatory Data Collection that updated and expanded the instructions and reporting templates from the Third Mandatory Data Collection, and issued a *Public Notice* seeking comments on all aspects of the proposed revisions to the collection.<sup>12</sup> Concurrently, in accordance with the Paperwork Reduction Act of 1995 (PRA), the Commission published a notice in the Federal Register seeking comment on potential burdens of the proposed reporting requirements.<sup>13</sup>

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<sup>6</sup> *Id.* §§ 2, 3(a); 47 U.S.C. § 276(b)(1)(A).

<sup>7</sup> Martha Wright-Reed Act § 3(b)(2).

<sup>8</sup> *Id.* § 3(b)(1).

<sup>9</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14172-73, paras. 124-26 (2013) (adopting the First Mandatory Data Collection); *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, 12862, para. 198 (2015) (adopting the Second Mandatory Data Collection); *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519, 9619-20, para. 221 (2021) (*2021 ICS Notice* or *2021 ICS Order*) (adopting the Third Mandatory Data Collection).

<sup>10</sup> *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Notice of Proposed Rulemaking and Order, FCC 23-19, at 2, 33, paras. 2, 84 (2023) (*2023 IPCS Notice* or *2023 IPCS Order*).

<sup>11</sup> *2023 IPCS Order* at 33-34, paras. 84-85. The Commission directed WCB and OEA to "implement any appropriate modifications" to the Third Mandatory Data Collection, including updating the instructions and reporting template for that collection, "to the extent appropriate to timely collect . . . information to cover the additional services and providers now subject to [the Commission's] authority." *Id.* at 33-34, para. 85.

<sup>12</sup> *Public Notice* at 2.

<sup>13</sup> Federal Communications Commission, Information Collection Being Reviewed by the Federal Communications Commission, 88 Fed. Reg. 27885 (May 3, 2023) (*60-Day PRA Notice*).

6. We received comments from several IPCS providers, public interest advocates, and other interested parties in response to the *Public Notice*,<sup>14</sup> and one comment in response to the PRA notice.<sup>15</sup> We have thoroughly considered all of these filings in adopting the requirements for the final 2023 Mandatory Data Collection.

### III. DISCUSSION

#### A. Implementing the 2023 Mandatory Data Collection

7. Pursuant to our delegated authority, we adopt the 2023 Mandatory Data Collection Instructions, Word and Excel templates, and certification form as proposed in the *Public Notice*, with some exceptions discussed below. Commenters generally support the broad contours and specific requirements of the data collection as proposed and do not challenge our proposal to retain the overall reporting structure and organization of the Third Mandatory Data Collection as the basis for this collection.<sup>16</sup>

8. Commenters offer various suggestions that, in their view, would improve the proposed data collection.<sup>17</sup> In light of these comments, we reevaluate some of our proposals and refine certain aspects of the instructions and templates, as set forth in greater detail below, while retaining the overall structure of the data collection as proposed. These refinements include modifying the treatment of video IPCS and safety and security measures, clarifying the reporting of costs related to site commissions, and revising certain proposed definitions. We conclude that the modifications we make “appropriately balance the need for ‘detailed and specific instructions and templates’ and the desire to avoid undue burdening providers.”<sup>18</sup>

9. In finalizing the requirements for the data collection, we do not resolve issues pending in the *2023 IPCS Notice*, as some commenters propose.<sup>19</sup> Doing so would exceed the authority the Commission delegated to WCB and OEA.<sup>20</sup> The *Public Notice* expressly foreclosed “seek[ing] additional comment on the questions and other issues previously raised in the *2023 IPCS Notice* or in relevant prior Commission or Bureau notices,”<sup>21</sup> and we do not address commenters’ proposals to the contrary in this

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<sup>14</sup> We received comments or replies in response to the *Public Notice* from Ameelio; Global Tel\*Link Corporation d/b/a ViaPath Technologies (ViaPath); Pay Tel Communications, Inc. (Pay Tel); Securus Technologies, LLC (Securus); Worth Rises; and the Wright Petitioners.

<sup>15</sup> ViaPath Paperwork Reduction Act Comments (filed July 3, 2023) (ViaPath PRA Comments).

<sup>16</sup> Pay Tel Comments at 1; Securus Comments at 1; ViaPath Comments at 3; Worth Rises Comments at 1; Wright Petitioners Comments at 2.

<sup>17</sup> ViaPath Comments at 4; Pay Tel Comments at 3, 4, 6-7; Securus Comments at 2, 5; Wright Petitioners Comments Appx. A, Brattle Report at 13-14, para. 28 (Brattle Report).

<sup>18</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, 37 FCC Rcd 368, 370, para. 7. (WCB/OEA 2022) (*Third Mandatory Data Collection Order* or *Third MDC Order*).

<sup>19</sup> See, e.g., Pay Tel Comments at 3 (seeking a determination that all safety and security measure costs are recoverable); but see Worth Rises Reply at 3 (“There simply is no basis for [Pay Tel’s] claim that all safety and security measures are recoverable through IPCS rates.”).

<sup>20</sup> A change in the Commission’s rules requires action by the full Commission and cannot be adopted by WCB and OEA on delegated authority. *Third MDC Order*, 37 FCC Rcd at 371, para. 8 (explaining that a data collection is “not the proper administrative vehicle to . . . change Commission rules”).

<sup>21</sup> *Public Notice* at 2; see also *2021 ICS Order*, 36 FCC Rcd at 9618-19, paras. 218, 221 (explaining that the purpose of a data collection is to provide the Commission with sufficient information to resolve various issues it is considering).

Order. Instead, the purpose of the data collection is to provide the Commission with an objective foundation for addressing the issues it must resolve to implement the Martha Wright-Reed Act.<sup>22</sup>

10. In the sections that follow, we first address the overall scope of the data collection and then turn to proposals to revise specific instructions.

## **B. Overall Scope of the Data Collection**

### **1. Reporting Period**

11. We limit the data collection to calendar year 2022, consistent with our proposal in the *Public Notice*.<sup>23</sup> We find that the data from 2022 will provide the most pertinent and the best indicator of relevant costs. Some commenters propose that we expand the data collection reporting period beyond just 2022.<sup>24</sup> Others argue that the burden of requiring additional years of data would “outweigh[] any material benefit.”<sup>25</sup> We decline to expand the reporting period. Data from 2022 represent the most recent data available, and are therefore likely to be more representative of future operations by IPCS providers than data from prior years. To the extent that data from prior years would be useful in determining just and reasonable rates, we already have data regarding audio IPCS, including investments, expenses, revenues, demand, site commission payments, and ancillary services charges and practices, from the Third Mandatory Data Collection. We recognize that those data are limited to audio IPCS, but find that the burdens associated with collecting video data for prior years would outweigh any potential benefit. In particular, the pandemic had a substantial impact on providers’ operations and likely accelerated the implementation of (and therefore increased the costs and revenues associated with) video IPCS as a substitute for in-person visitation, such that data from those prior years may not be representative of providers’ future operations.<sup>26</sup> As a result, we find that collecting data solely for 2022 will best equip us to set rate caps that reflect providers’ operations going forward and avoid the burdens associated with collecting additional data that may not be representative or are already available for prior periods.<sup>27</sup>

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<sup>22</sup> See *2021 ICS Order*, 36 FCC Rcd at 9618-19, paras. 218, 221.

<sup>23</sup> *Public Notice* at 3.

<sup>24</sup> See, e.g., Worth Rises Comments at 3 (suggesting that we expand the data collection to include “safety and security expense data” from 2020 and 2021 so as to have three years of such data to reconcile and compare); Worth Rises Reply at 5; see also Wright Petitioners Comments, Brattle Report at 3, para. 4 (suggesting that the Commission should expand the entire data collection to capture 2021 data as well). But see ViaPath Reply at 2 (“The Bureaus should reject calls to expand the proposed MDC beyond what is ‘appropriate in light of the requirements’ of the MWR Act.”); Securus Reply at 2-4.

<sup>25</sup> See, e.g., Securus Comments at 2 (reasoning that “there is little value” in requiring data, specifically on intrastate costs, beyond 2022, because such costs are “not materially different” from interstate costs and have not been isolated by providers); Pay Tel Reply at 4 (agreeing with Securus that “the reporting period for voice and video calling services should be limited to the 2022 calendar year”); Securus Reply at 8.

<sup>26</sup> See, e.g., *Third MDC Order*, 37 FCC at 381, para. 36 (finding that the record indicated that “providers [may have] incurred large one-time costs related to COVID-19,” which posed the risk of “atypical, one-time expenses . . . being considered normal company costs”); Pay Tel Reply at 4 (explaining that “safety and security data for 2020 and 2021 is not reconcilable with past or present data submissions due to the paradigm-shifting effects of the COVID pandemic” to argue imposing reporting requirements for safety and security costs for those years “would impose a significant burden with little to no material benefit”).

<sup>27</sup> In our *60-Day PRA Notice*, we estimated that it would take IPCS providers an average of 230 hours to respond to the data collection. *60-Day PRA Notice*, 88 Fed. Reg. at 27885. ViaPath argues that we have “grossly underestimated the amount of time it will take IPCS providers to respond to the proposed MDC.” ViaPath PRA Comments at 3. We previously rejected ViaPath’s almost identical argument regarding our burden estimate for the Third Mandatory Data Collection, explaining that ViaPath “is the largest calling services provider, ‘with an estimated market share approaching 50%.’ Given that market share, we would expect that [ViaPath’s] total response time would far exceed any industry average, regardless of the number of estimated hours.” *Third MDC*

(continued....)

12. While we recognize the incremental benefits of having more comprehensive cost data, most of the categories of data that we seek in this data collection were addressed in the previous data collection, such that collecting these data from years prior to 2022 would be largely redundant. To the extent we seek new categories of data, the burden on providers to produce those data would be significant. Given the burdens already imposed by this revised data collection which are necessary to implement the new statute, as well as the comparatively shorter timeframe for submitting responses,<sup>28</sup> we decline to impose an additional burden by expanding the reporting period as some commenters propose.

## 2. Cost Reporting and Cost Allocation

13. In the *Public Notice*, we proposed to adapt the cost reporting and cost allocation methodologies specified for the Third Mandatory Data Collection for use in the 2023 Mandatory Data Collection. No commenter challenges this overall approach or suggests fundamental changes to our proposals for applying those methodologies to video IPCS. Instead, commenters suggest relatively discrete modifications to our proposed instructions for reporting company-wide cost data and for allocating reported costs among cost categories.<sup>29</sup> After considering these comments, we adopt the cost allocation methodology essentially as proposed, with modifications to the instructions designed to help providers understand our cost allocation methodology and to obtain further information on how providers implement it. We also modify the instructions to establish, at the facility-specific level, the same reporting structure for capital assets and expenses that is in place at the company-wide level.

14. As a general matter, our changes to the cost reporting and cost allocation instructions reflect an understanding, from our review of the Third Mandatory Data Collection submissions, that certain providers' internal accounting and recordkeeping systems limit those providers' ability to provide highly disaggregated cost data and to finely tune their cost allocation procedures.<sup>30</sup> Given these limitations, our revised instructions generally require providers to describe in greater detail their implementation of our cost reporting and cost allocation instructions, rather than prescribe additional cost reporting and cost allocation requirements for which certain providers may not have the internal accounting systems needed to comply with such requests.

15. For example, we require providers to describe the types of costs they include in various capital and operating expense categories, rather than list the types of costs that are to be included in each category, as one commenter suggests.<sup>31</sup> We also require providers to describe in greater detail the factors they use to allocate certain types of shared and common costs among audio IPCS, video IPCS, and

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*Order*, 37 FCC Rcd at 380 n.105 (citing *2021 ICS Order*, 36 FCC Rcd at 9550, para. 74). The record in this proceeding provides no indication that ViaPath's market status has changed or that our proposed burden estimate did not reflect the industry average. Nevertheless, we will revise our average burden estimate to account for the additional effort required to comply with the changes from our proposals that we adopt in this Order. Our revised estimate, which will be included in the subsequent 30-day PRA notice related to this data collection, will reflect the likely burden of the data collection.

<sup>28</sup> As discussed below, responses to this data collection will be due 97 days from the date of this Order.

<sup>29</sup> Wright Petitioners Comments, Brattle Report at 5, 7, 8, paras. 10, 15, 17 (suggesting the Commission could improve the data collection by "providing more detailed instructions on what costs should be included in a category" and by providing examples of how providers should allocate shared costs).

<sup>30</sup> Securus Reply at 2-3 (arguing that "[p]recision will not be improved by requiring providers to artificially allocate costs into ever more discrete buckets that in no way reflect how expenses are tracked in the normal course of business," and noting the difficulty smaller providers would encounter in trying to perform "highly granular allocations"); ViaPath Comments at 3-4.

<sup>31</sup> Wright Petitioners Comments, Brattle Report at 7, para. 15 (contending that we should require providers "to list out example[s] of the types of services and associated costs they are attributing to each [operating expense category]").

nonregulated services, rather than specifying factors for providers to use in performing those allocations.<sup>32</sup> We find that these revisions will help the Commission understand the nature of the reported costs, without imposing significant additional burdens on providers that would be unlikely to result in more useful information.<sup>33</sup>

16. We reject, however, ViaPath's proposal that we permit providers to "use the allocation methodologies that best reflect [their] business and the way in which [they] keep[] [their] books and records as long as the provider[s] document[] and explain[] [such] methodologies in [their] MDC response[s]."<sup>34</sup> The detailed cost allocation hierarchy set forth in the proposed instructions was carried forward from the instructions for the Third Mandatory Data Collection and, as such, reflects the Commission's directive that the Third Mandatory Data Collection collect, "to the extent possible, uniform cost . . . data from each provider."<sup>35</sup> In directing that we "update and restructure" that prior data collection,<sup>36</sup> the Commission did not propose or suggest that we should undertake wholesale revisions to the core methodologies of the Third Mandatory Data Collection by allowing each provider to devise its own allocation methodology. As the Wright Petitioners point out, allowing providers to devise their own cost allocation methodologies in the previous data collection led to "large discrepancies between costs allocated towards capital expenses and operating expenses,"<sup>37</sup> with providers assigning costs inconsistently among the categories provided and reporting nonregulated service costs as inmate calling services costs.<sup>38</sup> Allowing providers to use their own allocation methodologies also would substantially increase the back-end burden on all parties that want to process and analyze the reported data, because of the extent and complexity of the adjustments that would be necessary to correct for inconsistencies among providers' responses. The cost allocation hierarchy set forth in the instructions provides a necessary and workable framework within which to standardize and compare the data submitted, while, as we recognize above, affording providers flexibility to implement the cost allocation instructions in a manner that reflects their accounting and recordkeeping systems.

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<sup>32</sup> See *id.* at 4, para. 9 (suggesting the possible use of a cost allocation factor "based on speed requirements, bandwidth consumption, or storage costs of audio versus video calls" to allocate common costs between audio and video IPCS); Securus Reply, Attach. Declaration of Charlie J. Choe, Brian F. Pitkin, and Steven E. Turner Regarding the Proposed 2023 Mandatory Data Collection (FTI Declaration) at 13-14, paras. 6-7 (discussing factors that Securus may use to allocate costs to services using tablets, noting "[t]ablets may provide access to . . . a multitude of other [nonregulated] services").

<sup>33</sup> Relatedly, we decline to identify and exclude specific types of costs that could be characterized as unrelated to the provision of IPCS from any particular category. Wright Petitioners Comments, Brattle Report at 15-16, para. 33. The 2023 IPCS Notice invited comment on which types of costs should be reflected in IPCS rates, and we indicated that advocacy concerning issues before the Commission in the rulemaking would not be considered in this context. See 2023 IPCS Notice at 21, para. 49; Public Notice at 2.

<sup>34</sup> ViaPath Comments at 3-4; ViaPath Reply at 4. *But see* Wright Petitioners Reply at 5 n.11 ("As the Commission has previously concluded, concerns about different approaches to cost allocation are not a reason for the Commission to decline to take action." (citing the 2021 ICS Order, 36 FCC Rcd at 9544, para. 59)). We once again reject ViaPath's argument, previously raised in response to the Third Mandatory Data Collection, regarding the differences in book and record keeping between non-dominant and dominant carriers. ViaPath PRA Comments at 4. As WCB found in the *Third MDC Order*, "[w]hether providers are dominant has no bearing on the Commission's authority to mandate the manner in which ICS providers report cost data. Our requests apply to all ICS providers." *Third MDC Order*, 37 FCC Rcd at 381, para. 37 & n.109 (internal quotation marks and citation omitted).

<sup>35</sup> 2021 ICS Order, 36 FCC Rcd at 9621, para. 225.

<sup>36</sup> 2023 IPCS Order at 33, para. 84.

<sup>37</sup> Wright Petitioners Comments, Brattle Report at 4, para. 7.

<sup>38</sup> *Id.* At 6-7, para. 13.

### 3. Overall Reporting Categories

17. We adopt our proposal to require providers to allocate their investments and expenses among audio IPCS, video IPCS, safety and security measures, various types of ancillary services, and other services and products.<sup>39</sup> We find, subject to certain refinements related to safety and security measures, that these categories are well-suited to provide the Commission with the information it needs to comply with its ratemaking responsibilities under the Communications Act and the Martha Wright-Reed Act without unduly burdening providers.

18. We decline to require providers to subdivide their audio and video IPCS costs into more discrete categories based on the type of audio or video service being provided, as some parties suggest.<sup>40</sup> While we recognize that video IPCS costs may vary based on the equipment used to provide the service,<sup>41</sup> we find that the best way to address this possibility is to ask providers to report the per-unit costs of the devices used for video IPCS. This information, combined with the requirement that providers report their video IPCS costs on a facility-by-facility basis while describing the video services provided at each facility, should provide sufficient information to measure any cost differentials among different video services without imposing on providers the burden of subdividing video IPCS costs into more discrete categories.

19. We adopt our proposal to allow, but not require, providers to subdivide their investments and expenses for audio IPCS, video IPCS, safety and security measures, and ancillary services between interstate/international and intrastate services.<sup>42</sup> While we recognize that providers likely experience “no meaningful difference[s]” between the costs of providing interstate/international and intrastate IPCS (other than the costs of terminating audio communications in foreign destinations),<sup>43</sup> we find this option properly allows providers the flexibility to inform the Commission if they do incur different costs based on the jurisdictional nature of the services they provide.

### 4. Safety and Security Measures

20. We adopt our proposal to require providers to allocate the annual total expenses they incurred in providing safety and security measures among seven categories using the provider’s best estimate of the percentage of those expenses attributable to each category.<sup>44</sup> After considering the

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<sup>39</sup> See *Public Notice* at 4; Securus Comments at 2 (agreeing that providers should endeavor to allocate their costs among traditional voice service, video calling services, ancillary services, and nonregulated services); ViaPath Comments at 3 (supporting separate cost categories for audio and video IPCS).

<sup>40</sup> See *Public Notice* at 4; Securus Comments at 2 (asserting that “[t]here is no need to further segregate costs into subcategories of voice and video service”); ViaPath Comments at 4.

<sup>41</sup> ViaPath Comments at 4 (stating that “video IPCS provided over a tablet may have different costs than video IPCS provided over a dedicated unit such as a kiosk”); Wright Petitioners Comments, Brattle Report at 16 (suggesting the providers’ “overall cost structure of providing video calling services” is impacted by the cost of equipment).

<sup>42</sup> See *Public Notice* at 4-5.

<sup>43</sup> ViaPath Comments at 4.

<sup>44</sup> *Public Notice* at 5. The seven categories, as set forth in the instructions adopted in this Order, are Communications Assistance for Law Enforcement Act (CALEA) compliance measures (i.e., safety and security measures that providers took to comply with CALEA); law enforcement support services; communication security services; communication recording services; call monitoring services; voice biometrics services; and other safety and security measures. With the exception of the CALEA compliance measures category, these categories update categories used in the Third Mandatory Data Collection. Calling Services for Incarcerated People Third Mandatory Data Collection Instructions, §§ IV.C.3.b., IV.D.2.c., [http://www.fcc.gov/sites/default/files/2022\\_mdc\\_-\\_instructions\\_to\\_third\\_mandatory\\_data\\_collection\\_1.18.2022.docx](http://www.fcc.gov/sites/default/files/2022_mdc_-_instructions_to_third_mandatory_data_collection_1.18.2022.docx) (link provided in *Third MDC Order* at Appx. A, Third Mandatory Data Collection Instructions and Template).

comments regarding this proposed allocation process, we modify the instructions for this allocation to make them clearer and more comprehensive.

21. Some providers take issue with our proposed seven-category framework for reporting safety and security measure costs, claiming that their internal accounting systems do not align with these categories and that providers will have difficulty allocating their costs in the manner proposed.<sup>45</sup> We do not find these arguments persuasive. As Securus concedes, the cost categories we proposed are similar to categories employed in the Third Mandatory Data Collection.<sup>46</sup> Accordingly, we find, as we did with the Third Mandatory Data Collection, that the proposed categories provide a comprehensive and workable framework for dividing safety and security measure costs into reasonably homogenous groupings that “should capture all [safety and] security costs,”<sup>47</sup> particularly with our addition of multiple examples of costs for each category. To the extent that providers make measures available that do not fit within the first six categories,<sup>48</sup> the data collection also includes a catch-all category for “Other Safety and Security Measures.”<sup>49</sup>

22. The Martha Wright-Reed Act requires the Commission to consider “costs associated with any safety and security measures necessary to provide” IPCS in setting IPCS rates.<sup>50</sup> While the commenters present sharply divergent views as to whether providers should be allowed to recover the costs of various types of safety and security measures through their rates,<sup>51</sup> our purpose here is to ensure, to the extent consistent with the providers’ internal accounting and recordkeeping,<sup>52</sup> that the data collection generates, in a timely manner, sufficient information for the Commission to implement

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<sup>45</sup> ViaPath Comments at 5 (noting “it may be difficult” for providers to separate their safety and security costs and allocate those costs into the seven categories); ViaPath Reply at 5 (repeating its position that it may not be possible to separate all safety and security costs into the Commission’s categories); Pay Tel Comments at 2 (arguing that providers’ accounting systems are not designed to track safety and security costs separately); Pay Tel Reply at 1-2 (agreeing with Securus and ViaPath “that it will be difficult for providers to report safety and security cost information in the manner proposed by the Commission”); *compare with* Securus Reply at 8 (“[T]he 3<sup>rd</sup> MDC in fact did ask for cost data for these same categories of security services (excluding CALEA).”); Worth Rises Reply at 2, 4 (challenging certain providers’ assertions that they cannot separate these costs and asserting that “[i]t is absurd to believe that the providers do not have the means to separate their safety and security costs across all IPCS categories”).

<sup>46</sup> Securus Comments at 4 (noting that the categories are the same as those established in the Third Mandatory Data Collection “[w]ith the exception of the addition of CALEA expenses”).

<sup>47</sup> *Third MDC Order*, 37 FCC Red at 374, para. 19 (establishing a category-based framework for reporting costs and additional information on security measures, and finding this approach to be comprehensive).

<sup>48</sup> *See* ViaPath Comments at 5; Pay Tel Comments at 4 (proposing the Commission collect data on safety and security measures that are ancillary or supplementary to IPCS).

<sup>49</sup> We find that imperfect alignment between our framework and providers’ accounting systems fails to compel an alternative approach, especially where record proposals suggesting alternative approaches or changes are predicated on policy determinations beyond the scope of this Order. The Commission’s obligation to “consider costs associated with any safety and security measures necessary to provide” IPCS is imposed by statute, and is not contingent on the particularities of the various “way[s] in which providers record costs.” Martha Wright-Reed Act § 3(b)(2); Pay Tel Comments at 4; Wright Petitioners Reply at 5 n.11 (“As the Commission has previously concluded, concerns about different approaches to cost allocation are not a reason for the Commission to decline to take action.” (citing the *2021 ICS Order*, 36 FCC Red at 9544, para. 59)).

<sup>50</sup> Martha Wright-Reed Act § 3(b)(2).

<sup>51</sup> Pay Tel Comments at 4-5 (arguing that safety and security costs are “by definition, recoverable costs” and suggesting that due to the lack of “a uniform system of accounting for IPCS providers,” reported costs for safety and security measures will vary depending on how providers record those costs and interpret the Commission’s instructions); Worth Rises Reply at 2-4; Wright Petitioners Reply at 2.

<sup>52</sup> Securus Reply at 2; Pay Tel Reply at 5.



“whatever decision it makes regarding the necessity of safety and security measures.”<sup>53</sup> This necessarily requires tradeoffs between pinpointing the costs of each safety and security measure providers offer and the providers’ ability to produce (and the Commission’s ability to process) highly disaggregated safety and security measure cost data within the 18 to 24 month statutory timeframe.<sup>54</sup> We find the proposed reporting structure and associated categories, modified as described below, to be the most effective means of balancing these competing considerations.

23. One commenter claims that the proposed categories “will not provide a full or accurate picture of how safety and security costs are associated with the service offering,”<sup>55</sup> while other commenters propose that we should “provid[e] examples and or definitions . . . of certain security services and costs that would fall under the seven categories,” and that the required safety and security cost data should, in general, be more granular.<sup>56</sup> The proposed instructions already include multiple examples of safety and security measures that fall within each of the seven categories. We find that these lists, as revised in response to the comments, are sufficiently comprehensive to allow providers to sort their safety and security measures into the categories we have established. However, because some commenters may not have understood the examples we provided,<sup>57</sup> we have reorganized the relevant instructions to simplify them and increase their clarity. Specifically, we modify both the company-wide and the facility-by-facility instructions to first require providers to assign each of their safety and security measures to one of the seven listed categories and second to allocate their aggregate costs of providing safety and security measures among these categories.

24. In addition, we give providers the option to supplement what we require them to submit should they determine that more specific categories are needed to reflect their operations. Specifically, when allocating these costs, providers may divide the seven listed categories into subcategories of their own choosing, and thereby report costs in a more detailed manner. We find that allowing for further subdivision will better enable providers to submit a “full [and] accurate picture” of their costs in a way that “meaningfully distinguish[es] among these costs,” while also retaining the uniform reporting structure that is necessary for us to effectively compare cost data among providers.<sup>58</sup> We also adopt a suggestion that we instruct providers to assign any safety and security measure that does not precisely match any of our provided examples to the category that provides the best fit, and to allocate the costs of such measures accordingly.<sup>59</sup> Directing providers to categorize services in this manner will give them additional flexibility in applying the categories to their own internal accounting structures.<sup>60</sup>

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<sup>53</sup> Worth Rises Reply at 2.

<sup>54</sup> Martha Wright-Reed Act § 2(d).

<sup>55</sup> Pay Tel Comments at 3; Pay Tel Reply at 2.

<sup>56</sup> Wright Petitioners Comments, Brattle Report at 10, para. 22. Conversely, Securus argues that the *Public Notice* “provides no rationale for why the proposed . . . level of disaggregation is necessary to implement” the requirement that we “consider the costs associated with any safety and security measures necessary to provide” IPCS. Securus Comments at 4. However, the *Public Notice* explicitly proposed that this disaggregation would “facilitate the Commission’s consideration” of “costs associated with any safety and security measures necessary to provide” IPCS, as required under the Act. *Public Notice* at 5. In sum, in order to assess and distinguish between “necessary” and unnecessary costs, the Commission must obtain as comprehensive an understanding of such costs as is feasible under the circumstances.

<sup>57</sup> *Public Notice* at 3-4; ViaPath Comments at 5; Pay Tel Comments at 5; Securus Comments at 3-4.

<sup>58</sup> Pay Tel Comments at 3.

<sup>59</sup> Wright Petitioners Comments, Brattle Report at 10, para. 22.

<sup>60</sup> We decline to adopt Securus’s proposal to remove the category for CALEA compliance measures. Securus Comments at 4. Questions of the applicability of CALEA to IPCS providers are not relevant to the purpose of the data collection. Wright Petitioners Reply at 5 (arguing in opposition to proposals to remove the CALEA-related cost category, “[t]he Commission need not resolve at this time whether all IPCS providers are exempt from the

(continued....)

25. To further help providers allocate safety and security costs among the established categories, we modify the instructions to include additional guidance. These changes address certain commenters' concerns about their ability to allocate their security costs among each category within our seven-category reporting framework without further guidance.<sup>61</sup> However, given providers' concerns with their ability to implement the seven-category framework,<sup>62</sup> we decline to require that the expenses allocated to each of the seven categories be further allocated among the various safety and security measures within each category.<sup>63</sup> Conversely, we also decline to adopt Pay Tel's proposal that we limit our collection to "data regarding Safety and Security Measures associated with distinct and separate 'system[s], product[s], or service[s]' which are provided as ancillary components to the IPCS offering."<sup>64</sup> As an initial matter, those measures are effectively encompassed within our categories. To the extent that Pay Tel is proposing that we only collect such data, that approach would require that we prejudge which safety and security measures are "necessary," which would be beyond the scope of our delegated authority.<sup>65</sup>

26. We also decline to subdivide the safety and security measures reporting category into different real-time and non-real-time subcategories, as one commenter urges.<sup>66</sup> We find that the granularity already included in the safety and security reporting requirements is sufficient to provide the Commission with the data it will need to set just and reasonable rates caps for IPCS. The additional

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CALEA requirement" and find that only providers subject to CALEA compliance and with reportable costs "should allocate those costs in the appropriate category. . . . There is no reason to eliminate the category."). We require data on providers' costs of complying with CALEA, to the extent they are incurred, so that the Commission may decide whether to include or exclude these costs from the underlying rates. Worth Rises Reply at 5. If, as Securus claims, CALEA is not applicable to IPCS, then providers should have no costs to report in this category and the reporting burden (if any) will be minimal. Securus Comments at 4-5; Wright Petitioners Reply at 2, 5.

<sup>61</sup> ViaPath Comments at 5 ("separating the costs associated with safety and security measures from other IPCS costs may not be possible in all cases, especially using" the seven-category framework); Pay Tel Comments at 3-4; Securus Comments 3-5; Wright Petitioners Comments, Brattle Report at 10, para. 22.

<sup>62</sup> Securus Comments at 4 (taking issue with the proposed structure, level of disaggregated data sought, and categories for collecting information regarding providers' safety and security measures); Securus Reply, FTI Declaration at 14 ("A key concern is that many of the [safety and security] services do not fit neatly into the categories as outlined by the Commission."); Pay Tel Comments at 3-5 (criticizing the seven-category framework, and disputing its accuracy and usefulness); Pay Tel Reply at 3 (opposing record proposals that would require actual expense reporting of safety and security costs by arguing that "the Commission has appropriately realized" that the reporting of actual expenses may not be possible if the provider's record keeping systems do not allow for precise allocations); ViaPath Comments at 5 (noting that "it may be difficult" to perform the proposed cost allocation for safety and security measures).

<sup>63</sup> Worth Rises Comments at 2 (proposing that the Commission require providers to allocate expenses for each "line item" reported under each safety and security category); Pay Tel Reply at 3 (explaining that "if an [IPCS] provider's books and records do not show a precise allocation, then some estimate is required in order to categorize safety and security costs" and that "the reporting of 'actual expenses' in the manner [certain commenters] proposed simply is not possible in all cases, as the Commission has appropriately recognized"); Securus Reply at 2 ("Advocates appear to believe that the collection of ever more information subdivided into ever more discrete categories will heighten precision and diminish the ability of providers to submit inflated costs. This belief simply does not reflect reality.").

<sup>64</sup> Pay Tel Comments at 4.

<sup>65</sup> See *Third MDC Order*, 37 FCC Rcd at 371, para. 8 (finding that data collections, such as this one, are "not the proper administrative vehicle" to make policy determinations).

<sup>66</sup> See Worth Rises Comments at 1-2 (suggesting that we should require providers to allocate their costs of providing safety and security measures among real-time audio, real-time video, non-real-time audio, and non-real-time video); Worth Rises Reply at 2.

burden more subdivision would impose on providers outweighs any potential benefit of further disaggregation.

27. One commenter observes that “there are no safety and security costs associated with ancillary services of the type contemplated” for IPCS.<sup>67</sup> We agree that this is likely the case for most providers, but those providers can simply enter “0” in the appropriate Excel template cells. Accordingly, we will include the proposed inquiries asking providers to report any safety and security costs they incur in connection with their ancillary services. We find that this approach will accommodate potential variation among providers’ practices without burdening any provider.<sup>68</sup>

28. Lastly, we supplement questions in the Word template in order to obtain additional information on providers’ safety and security measures.<sup>69</sup> Commenters discuss certain nuances that may apply to the implementation of safety and security measures and consequent cost allocation issues that are not fully addressed by the questions proposed (e.g., differences based on infrastructure and devices used to provide IPCS, and circumstances in which safety and security services apply to both IPCS and nonregulated services).<sup>70</sup> We agree with these commenters on the need to seek additional information from providers regarding their safety and security measures and attendant practices. Commenters also dispute the extent to which “providers’ accounting systems” are—or are not—“designed to track ‘safety and security’ costs.”<sup>71</sup> Given this ambiguity as to providers’ accounting practices for safety and security measures, particularly in light of providers’ concerns about their ability to apply their accounting systems to the categories we proposed, we find that additional information concerning providers’ accounting practices and how they allocate their internal data among our seven categories will assist the Commission in accurately determining the costs of providers’ safety and security measures and distinguishing between “essential and non-essential costs.”<sup>72</sup> Accordingly, we modify the instructions and Word template to obtain information on these subjects, in order to provide the Commission with a more comprehensive and accurate understanding of providers’ implementation of, and accounting and recordkeeping practices regarding, safety and security measures.<sup>73</sup>

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<sup>67</sup> Securus Comments at 4.

<sup>68</sup> *Id.*

<sup>69</sup> Worth Rises Comments at 1-2; Wright Petitioners Comments, Brattle Report at 16-18, para. 34; Wright Petitioners Reply at 3-4.

<sup>70</sup> Wright Petitioners Comments, Brattle Report at 9-10, paras. 20-22 (suggesting that providers’ costs to provide security features may differ “depending on the video access infrastructure”); Worth Rises Reply at 1-2 (advocating that the Commission not limit the definitions of audio IPCS and video IPCS based on the technologies used to deliver the services); Wright Petitioners Reply at 3-4 (evaluating some record proposals to collect more safety and security data before urging the Commission to “not collect less data than proposed”).

<sup>71</sup> Pay Tel Comments at 2 (arguing that safety and security are “integral” to IPCS such that “providers’ accounting systems are not designed to track ‘safety and security’ costs (as opposed to specific security-related service offerings)” as separable components of the service); Pay Tel Reply at 5 (repeating the statement); ViaPath Comments at 5 (arguing that “correctional facilities face ‘legitimate security interest[s]’ when it comes to” IPCS and so “separating the costs associated with safety and security measures from other IPCS costs may not be possible in all cases”); *but see* Wright Petitioners Reply at 4-5 (pointing out that “a review of publicly available contracts indicates that safety and security costs are broken out in certain contracts”); Worth Rises Reply at 4 (arguing that “providers consistently offer many of their safety and security services to corrections agencies on an optional basis with a separate price, which demonstrates an analysis of related expenses”).

<sup>72</sup> Pay Tel Comments at 4 (arguing that “[a]s crafted, the reporting form conflates essential and non-essential costs into a single category”).

<sup>73</sup> We decline to adopt Pay Tel’s proposal to develop a separate template for facilities to submit data on their own costs of providing safety and security measures. Pay Tel Comments at 5. Although we acknowledge that facilities are more likely to have this information than providers, this proposal goes beyond our delegated authority.

## 5. Video IPCS

29. We adopt the majority of our proposals related to video IPCS, but make targeted changes to capture more complete information.<sup>74</sup> As the record now makes clear, the costs of providing video IPCS likely vary depending on the specific infrastructure, devices, methods, technologies, and features used to provide those services. We find that this data collection should attempt to capture those variations at a more granular level than we proposed, to the extent possible without unduly burdening providers. Informed by the record compiled in response to the *Public Notice*,<sup>75</sup> we agree that additional information concerning video IPCS would assist the Commission in its ratemaking efforts and therefore add general inquiries regarding the technical requirements of the providers' video IPCS offerings, the infrastructure used to provide those services, and the reasons for and costs of any data storage associated with those services, among other matters.

30. *Service Parameters.* To help the Commission understand the providers' video IPCS offerings, we require providers to describe in detail each video service they provided during 2022.<sup>76</sup> Providers must also identify, among other matters, each transmission technology used to provide each type of video service they provided to incarcerated people, provide any information they have regarding service parameters and performance indicators, and describe any steps they take to monitor whether the service functions properly.<sup>77</sup> We also require providers to state whether they, as opposed to the correctional facilities, provide any broadband connection needed for the providers' IPCS offerings; the extent to which they use those connections to provide audio as well as video IPCS; and the extent to which facilities use those connections for their own communications.

31. *Infrastructure.* We require providers to describe the infrastructure they used to provide video IPCS, including any infrastructure that is located within correctional facilities.<sup>78</sup> We find that information on the type of infrastructure facilities deployed and its technical capabilities, to the extent the providers have that information, will help the Commission evaluate providers' video IPCS offerings. Accordingly, we have added a question to the Word template that directs providers to explain whether they, as opposed to the facilities they serve, provide and maintain any infrastructure that is located within facilities. We also direct providers to submit any information they have on the nature and capabilities (e.g., speed and latency) of the video IPCS infrastructure located within the facilities they serve, including use and general capability of Wi-Fi routers, if known.

32. *Data Storage.* We add additional inquiries to the Word template designed to capture data on the storage costs associated with video IPCS in comparison to audio IPCS, as well as other

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<sup>74</sup> See generally Wright Petitioners Comments, Brattle Report at 16-18, para. 34 (suggesting several proposed additions to video IPCS-related data requests); cf. Securus Reply at 2 (challenging, generally, the relevance and appropriateness of the proposals in the Brattle Report); ViaPath Reply at 2-3 (contending that the Brattle Report's proposals exceed the mandate of the Martha Wright-Reed Act).

<sup>75</sup> See generally Wright Petitioners Comments, Brattle Report at 16-18, para. 34 (generally discussing additional inquiries for us to consider regarding video IPCS).

<sup>76</sup> Amealio Reply at 3 (noting that the facility's network equipment and broadband connection has an impact on video IPCS and offering alternative methods the Commission could use to collect more complete information on video IPCS), see also Wright Petitioners Comments, Brattle Report at 14 (suggesting the Commission collect data on performance indicators for video IPCS).

<sup>77</sup> Amealio Reply at 3 (proposing that either specifying parameters for performance indicators to be reported against or allowing providers to specify the parameters over which they provide video IPCS and the resulting performance indicators would produce "a more complete picture of IPCS performance").

<sup>78</sup> See *id.* (identifying the impact that a facility's network equipment has on video call quality and noting "[f]or example, if a facility has a relatively low-speed broadband connection, or a limited number of WiFi access points," a provider's video IPCS "might be limited by factors that are extrinsic to the provider's service").

information regarding data storage policies and practices.<sup>79</sup> Based on information in publicly available contracts, the Wright Petitioners suggest expanding our data storage-related questions to request information on data retention policies and the data processing and analysis costs associated with video IPCS.<sup>80</sup> We agree that additional questions regarding the quantity of data stored and the storage period will help the Commission understand the costs associated with video IPCS.<sup>81</sup> Likewise, if, as the Wright Petitioners suggest, data storage costs vary depending on the storage method and underlying technology used,<sup>82</sup> information on those factors may also be useful to help the Commission discharge its ratemaking responsibilities. We therefore include an additional narrative request asking providers to explain these matters. We find that allowing providers to submit a narrative response to this request imposes less of a burden on providers than would a more granular approach, such as requiring providers to report this information on a facility-by-facility basis.

33. *Other Video IPCS Information.* We also add questions about how providers market and sell video IPCS to consumers. These questions include inquiries regarding whether video IPCS is offered as a stand-alone service or is “bundled” with other services. We also include questions asking whether video IPCS rates are based on minutes of use, number of communications, or data usage, and whether there are any limitations or conditions on how incarcerated people may use video IPCS.<sup>83</sup> We find that these questions provide the best approach for ensuring that the data collection captures information on providers’ rate structures and practices affecting video IPCS.<sup>84</sup>

34. We decline to adopt one commenter’s proposal that we require providers to “track and report usage data for apps that are not free to the end-user.”<sup>85</sup> Although such usage data might be helpful in providing context for the provision of IPCS on tablets and any associated costs, that is not the focus of this collection. Rather, we directly address the fundamental elements of providing IPCS on tablets by requiring providers to submit data on video sessions, audio minutes, and inputs for providing audio and video IPCS (e.g., hardware, software, and network connectivity), as well as costs exclusively attributable to IPCS versus other services. We find that these questions are sufficient to address, and more directly target, any issues that may be particular to the provision of IPCS on tablets.

## 6. Site Commissions

35. As a general matter, we adopt the questions concerning company-wide and facility-level site commissions proposed in the *Public Notice*, which were largely based on the Third Mandatory Data Collection, as well as the proposed updates to the related instructions and templates.<sup>86</sup> Those updates

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<sup>79</sup> Wright Petitioners Comments at 5 (identifying how IPCS providers store video IPCS as a type of data for the Commission to collect); *see also* Wright Petitioners Comments, Brattle Report at 19-20, paras. 35-36 (discussing data storage costs for video IPCS and offering proposals); *see also* Amealio Reply at 2 (noting that the costs to store a video call may be as much as ten times higher than similar costs for storing voice calls).

<sup>80</sup> Wright Petitioners Comments, Brattle Report at 19, para. 35 (stating “[i]f data is stored for a long time, there is a need for more storage capacity”); *see also* Amealio Reply at 2 (stating that the costs for storing video and voice calls “scales linearly with the number of months of storage required by the correctional facility”).

<sup>81</sup> Wright Petitioners Comments, Brattle Report at 18-20, paras. 35-36 (asking that we collect data on duration of storage of video calls and the costs of storage).

<sup>82</sup> *Id.* at 19, para. 36 (explaining that “[r]ecent advancements in technology have made it cost effective to store large amounts of data” and that “cloud storage solutions are [now] significantly cheaper than data storage solutions that were traditionally used”).

<sup>83</sup> *Id.* at 16-18, para. 34 (identifying these as topics to include in the data collection, among other proposals).

<sup>84</sup> 2023 *IPCS Notice* at 19, para. 45.

<sup>85</sup> Amealio Reply at 2 (citing the Wright Petitioners Comments, Brattle Report at 21 (identifying services that are potentially ancillary to video IPCS on which the Commission could collect data)).

<sup>86</sup> *Public Notice* at 8.

include additional questions seeking information on interstate, intrastate, and international site commissions, as well as information concerning site commissions for both audio and video services.<sup>87</sup> No commenter opposed the adoption of this general framework. The Wright Petitioners additionally propose that the instructions include a diagram or chart explaining the structure of our site commission data requests.<sup>88</sup> We agree that visual aids may improve the accuracy and consistency of the data reporting by helping providers better understand how to allocate their data among the different categories of site commissions.<sup>89</sup> Accordingly, we have added diagrams to the instructions.

36. We decline, however, to adopt the related request that we add instructions requiring providers to report specific details regarding each type of site commission.<sup>90</sup> The updated instructions and templates already require providers to submit this level of detail at the facility-level.<sup>91</sup> For instance, with regard to what qualifies as a legally mandated site commission, the instructions require that providers include a citation to the authority requiring such payment in the attached Excel template.<sup>92</sup> Moreover, for in-kind site commissions, the Word template requires providers to describe “each payment, gift, exchange of services or goods, fee, technology allowance, or product provided to the Facility that [the provider] classif[ies] as an In-Kind Site Commission payment” for both legally mandated and contractually prescribed site commissions.<sup>93</sup> Thus, the instructions and templates are already designed to provide the level of transparency sought.

## C. Specific Instructions

### 1. Definitions

37. Commenters generally support or do not comment on our proposed definitions. We therefore adopt the proposed definitions with certain modifications, as explained below.

38. *Audio IPCS and Video IPCS.* The proposed instructions included a definition of “IPCS,” but did not separately define “Audio IPCS” or “Video IPCS.” We adopt a request that we define each of these terms because we require cost allocation “between audio IPCS and video IPCS,”<sup>94</sup> and defining the relevant terms will help avoid potential confusion in making this allocation. We therefore add the following definitions to the instructions:

Audio IPCS means, for the purpose of this data collection, all services classified as inmate calling services within the meaning of 47 CFR § 64.6000(j), including (a) Interconnected VoIP; (b) Non-interconnected VoIP; (c) all Telecommunications Relay Services (TRS), including the use of a device or transmission service to access TRS; and (d) all point-to-point video services made available to incarcerated people for

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<sup>87</sup> *Id.*

<sup>88</sup> Wright Petitioners Comments, Brattle Report at 11, para. 23.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 12, para. 24.

<sup>91</sup> *Incarcerated People’s Communications Services, 2023 Mandatory Data Collection Instructions* at 53-59, § IV.D.2.b (*2023 MDC Instructions*) (linked to by Appx. A, *infra*).

<sup>92</sup> *Id.*

<sup>93</sup> *Incarcerated People’s Communications Services, 2023 Mandatory Data Collection Word Template* at 24-25, questions 65, 68 (linked to by the *2023 MDC Instructions* at 66, Appx. A, Mandatory Data Collection Word Template).

<sup>94</sup> Securus Comments at 5.

communication in American Sign Language (ASL) with other ASL users.<sup>95</sup>

Video IPCS means any video communications service used by incarcerated people for the purpose of communicating with individuals outside the correctional institution where the people are incarcerated, regardless of the technology used. It typically includes an integrated audio component, and excludes all services classified as Audio IPCS, as well as Other Products and Services, such as one-way entertainment, educational, religious, vocational, and instructional programming.

39. We decline to restrict the definitions of Audio IPCS “to voice-only calling services using either circuit switched or VoIP technology” and Video IPCS “to real-time remote or on-site video visitation services,” as one commenter suggests.<sup>96</sup> The Martha Wright-Reed Act unequivocally expands the definition of IPCS to include advanced communications services.<sup>97</sup> Advanced communications services broadly include “any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.”<sup>98</sup> We therefore do not limit the definitions of Audio IPCS or Video IPCS to specific types of technology used to transmit the services.<sup>99</sup>

40. *Safety and Security Measures.* We proposed a broad definition of “safety and security measures,” in accordance with the Martha Wright-Reed Act’s directive that the Commission “shall consider,” as part of its ratemaking, “costs associated with any safety and security measures necessary to provide” telephone service and advanced communications services in correctional institutions.<sup>100</sup> This approach was designed to allow the Commission the broadest possible view of the costs that providers and facilities incur. We agree, however, with Pay Tel’s observation that the proposed definition is “so broad as to encompass the entirety of IPCS.”<sup>101</sup> To eliminate this issue, we revise the definition of “safety and security measures” to read:

[A]ny safety or security surveillance system, product, or service, including any such system, product, or service that: helps the Facility ensure that Incarcerated People do not communicate with persons they are not allowed to communicate with; helps monitor and record on-going communications; or inspects and analyzes recorded communications. Safety and Security Measures also include other related systems, products, and services, such as a voice biometrics system, a PIN system, or a system concerning the administration of subpoenas concerning

<sup>95</sup> The services described in clauses (c) and (d) in this definition must be made available to incarcerated people with communication disabilities, to the extent required by 47 CFR § 64.6040, because they enable communication that is functionally equivalent to Audio IPCS. *See id.* § 225(a)(3). Therefore, they shall be treated as Audio IPCS for purposes of this data collection, notwithstanding any video component of those services.

<sup>96</sup> Securus Comments at 5; *see also* Securus Reply at 3-4 (maintaining that the Commission lacks authority to regulate the rates for non-real time audio and video services); *contra* Worth Rises Reply at 1 (challenging Securus’s position and proposal as being based in a “desire to limit the definition of audio and video IPCS [which] is driven by an intent to exclude services from regulation that Congress made no signal it intended to exclude”).

<sup>97</sup> Martha Wright-Reed Act § 2(a)(2); *see also* Worth Rises Reply at 1-2.

<sup>98</sup> 47 U.S.C. §§ 153(1)(E), 276(d); Worth Rises Reply at 1-2.

<sup>99</sup> Worth Rises Reply at 1-2.

<sup>100</sup> Martha Wright-Reed Act § 3(b)(2).

<sup>101</sup> Pay Tel Comments at 4 (arguing that that the proposed definition “creates a feedback loop where providers are being asked to report the entirety of their service costs . . . in a ‘catch all’ category”).

communications. The classification of a system, product, or service as a Safety and Security Measure does not mean that it is part of a Provider's IPCS-Related Operations.<sup>102</sup>

41. *Provider, Contractor, and Subcontractor.* In our proposed definitions, we sought to clarify the relationship between two types of IPCS providers—contractors and subcontractors—to provide notice of filing obligations to entities that may not have previously been subject to our authority.<sup>103</sup> We conclude, however, that further revisions are necessary. Pay Tel suggests that the Commission “should take steps to ensure that it is apprised of situations where multiple entities are involved in providing a covered service to avoid instances of incomplete or duplicated data.”<sup>104</sup> While it does not explain what the Commission should do in the event multiple entities are involved in the provision of IPCS, we agree that clarification of the definitions of “Provider” and “Subcontractor” will ensure we receive the data necessary to achieve “insight into overall service costs.”<sup>105</sup> We therefore amend our proposed definitions of “Provider” and “Subcontractor” to make clear that any contractor or subcontractor that is providing IPCS, regardless of whether that entity has a contract directly with the facility or with another provider, is considered to be a provider for the purposes of the data collection.

42. *Facility.* In the proposed instructions, we proposed including definitions for several synonyms for the term “Facility,” given the apparently interchangeable use of different terms in both the Martha Wright-Reed Act and the Commission's rules.<sup>106</sup> One provider suggests eliminating the four separate terms used “to reference a prison or jail,” and points out that “the Instructions themselves repeatedly use the term Facility.”<sup>107</sup> We agree that the inclusion of these terms is redundant and could cause confusion.<sup>108</sup> We therefore delete the defined terms “Correctional Facility,” “Correctional Institution,” and “Detention Facility” and edit the definition of “Facility” to include these terms synonymously. We likewise make conforming edits to refer only to “Facility” throughout the final instructions, templates, and certification form.

43. *Miscellaneous Definitional Edits.* We have also made various administrative revisions to the definitions. These include grammatical corrections, consistent use of terms, and other non-substantive edits.

## 2. Facility-Specific Data

44. We adopt, in modified form, the suggestion that we require providers to indicate via a checkbox “whether [facility-specific] data submitted is at the facility level or has been allocated from a contract, in order to ensure that contract-level data is correctly allocated to the facility level.”<sup>109</sup> We find

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<sup>102</sup> We proposed defining “Safety and Security Measures” as “including any such system, product, or service that allows Incarcerated People to communicate using IPCS as permitted by the Facility . . .” *Incarcerated Peoples' Communication Services, 2023 Mandatory Data Collection*, Proposed Instructions at 12, <https://docs.fcc.gov/public/attachments/DOC-393014A1.docx> (last visited July 13, 2023) (*2023 MDC Proposed Instructions*) (linked to by the *Public Notice* at 12, Appx. A, Proposed Mandatory Data Collection Instructions, Templates, and Certification Form. We now exclude this language from the definition.

<sup>103</sup> *2023 MDC Proposed Instructions* at 8, 12.

<sup>104</sup> Pay Tel Comments at 7; *see also* ViaPath Reply at 5-6 (urging us “to ensure that all entities providing IPCS respond to the MDC”).

<sup>105</sup> Pay Tel Comments at 6-7.

<sup>106</sup> *2023 MDC Proposed Instructions* at 9; *see also* Martha Wright-Reed Act §§ 2(b), 3(b), 4; 47 CFR § 64.6000.

<sup>107</sup> Securus Comments at 5 (referencing the terms “Correctional Facility, Correctional Institution, Detention Facility, and Facility”).

<sup>108</sup> *Id.*

<sup>109</sup> Wright Petitioners Comments, Brattle Report at 4, 22-23, paras. 8, 41.



that obtaining this information may help eliminate confusion when attempting to understand how providers arrived at the amounts reported in their cost categories.<sup>110</sup> However, we determine that this area is too nuanced for a checkbox and therefore revise the Word template to direct providers to identify whether the facility-specific data they report were recorded at the company, contract, or facility level. This requirement will clarify whether data were recorded at the facility-level or whether they have been allocated and must be justified. Because this step would be helpful and impose only minimal burdens on reporting providers, we add this question to the Word template.

### 3. Telecommunications Relay Services Costs

45. We amend the Word template to allow providers the option of providing information regarding any cost increases resulting from the TRS requirements adopted in the *2022 ICS Order*.<sup>111</sup> In that order, the Commission adopted several requirements to improve access to communications services for incarcerated people with communication disabilities.<sup>112</sup> IPCS providers must provide incarcerated people with communications disabilities with access to all relay services eligible for TRS Fund support in any correctional facility where broadband is available and where the average daily population incarcerated in that jurisdiction totals 50 or more persons.<sup>113</sup> It also required that where inmate calling service providers are required to provide access to all forms of TRS, they also must allow ASL direct, or point-to-point, video communication.<sup>114</sup> The Commission clarified and expanded the scope of the restrictions on inmate calling service providers assessing charges for TRS calls, expanded the scope of the required Annual Reports to reflect the above changes, and modified TRS user registration requirements to facilitate the use of TRS by eligible incarcerated persons.<sup>115</sup> Providers have had to comply with certain of these requirements (i.e., the limitations on charging) since they became effective earlier this year, while compliance with other requirements is mandated beginning January 1, 2024, or, in some cases, pending approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act.<sup>116</sup>

46. Because this data collection seeks data only for calendar year 2022, providers' submissions will not fully reflect any additional costs they incur in complying with the new TRS requirements. In recognition of this fact, Securus and Pay Tel urge that providers be given the option of submitting data estimating the costs of implementing the new requirements, even if those costs were not incurred in calendar year 2022.<sup>117</sup> We find this suggestion reasonable and therefore modify the Word template to allow, but not require, providers to report their estimates of their annual incremental costs of complying with the TRS requirements adopted in the *2022 ICS Order*, to the extent those costs are not

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<sup>110</sup> *Id.* at 4, para. 8.

<sup>111</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, FCC 22-76 at 8-28, paras. 19-65 (2022) (*2022 ICS Order* or *2022 ICS Notice*).

<sup>112</sup> *Id.*

<sup>113</sup> 47 CFR § 64.6040(b)(2). TRS are “telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind or who has a speech disability to engage in communication by wire or radio . . . in a manner that is functionally equivalent to the ability of a hearing person who does not have a speech disability to communicate using voice communication services.” 47 U.S.C. § 225(a)(3); 47 CFR § 64.601(a)(43).

<sup>114</sup> 47 CFR § 64.6040(b)(2)(ii).

<sup>115</sup> *Id.* §§ 64.611, 64.6040, 64.6060.

<sup>116</sup> See Federal Communications Commission, *Rates for Interstate Inmate Calling Services*, 87 Fed. Reg. 75514 (Dec. 9, 2022). Amendments to 47 CFR §§ 64.611(k)(1)(iv)-(v), 64.6040(c), and 64.6060(a)(5)-(7) will not become effective until the Office of Management and Budget (OMB) completes any review required under the Paperwork Reduction Act (PRA), and the Commission establishes an effective date by subsequent Public Notice.

<sup>117</sup> Securus Comments at 2; Pay Tel Reply at 3-4.

reflected in their data for 2022.<sup>118</sup> Annual incremental costs of TRS compliance are those the provider would not have incurred but for its compliance with these TRS requirements. Shared and common costs will already be reflected in the data providers will be reporting for 2022 and thus should be excluded from the annual incremental costs of TRS compliance.

#### 4. Facility Costs of Providing Safety and Security Measures

47. We adopt our proposal to require providers to report any verifiable and reliable information in their possession about the costs the facilities they serve incur to provide safety and security measures in connection with the provision of IPCS, as well as any verifiable and reliable information on other facility-incurred costs that are not directly related to safety and security. Any such information will provide the Commission with a more comprehensive picture of the total costs of providing IPCS. Pay Tel has encouraged us to include facilities' costs in any effort to calculate the costs of IPCS.<sup>119</sup> It argues that facilities incur recoverable costs "in making IPCS available" and supports our "efforts to document and acknowledge these costs."<sup>120</sup>

48. The record also suggests, however, that providers are "highly unlikely" to have such information on facilities' costs. One commenter proposes that the Commission develop a reporting template for use by facilities and seek this information directly from facilities.<sup>121</sup> Although we acknowledge that facilities may be more likely to have access to this information than providers, collecting data directly from facilities would raise a number of difficulties. Any attempt to seek data directly from facilities would arguably exceed the authority delegated to WCB and OEA by the Commission regarding this data collection.<sup>122</sup> Attempting to expand the data collection to include facilities would also pose significant practical challenges. Doing so would greatly expand the group of entities subject to the data collection and would multiply the burdens imposed by the collection. Furthermore, developing a template, seeking comments, and collecting responses from facilities would significantly delay the data collection and could prevent the Commission from meeting the statutory timeframe established by the Martha Wright-Reed Act. Accordingly, we decline to adopt this proposal. We emphasize, however, that the Commission has repeatedly encouraged correctional officials to submit data on their IPCS-related costs, including any costs they incur for safety and security measures.<sup>123</sup>

49. Finally, we adopt our proposal to require providers to be able to produce, on request, documentation sufficient to explain and justify the accuracy and reliability of any data they report regarding the costs incurred by facilities.<sup>124</sup> This requirement will enable the Commission to evaluate the

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<sup>118</sup> Securus Comments at 2; Pay Tel Reply at 4 ("Because the Commission has adopted rules which may impose significant new costs on IPCS providers, the Commission should enable data collection on estimated costs associated with those rules.").

<sup>119</sup> Pay Tel Comments at 5 ("[C]osts which should be recoverable by facilities are not limited to what the Commission proposes to label as 'safety and security' costs. . . . Pay Tel supports the Commission's efforts to document and acknowledge these costs.").

<sup>120</sup> *Id.* ("[C]osts which should be recoverable by facilities . . . [include] costs . . . incurred by facilities in making IPCS available.").

<sup>121</sup> *Id.*

<sup>122</sup> *2023 IPCS Order* at 33, para. 84 (directing WCB and OEA to collect data "from all providers of those services now subject to [the Commission's] expanded authority under the Martha Wright-Reed Act and the Communications Act").

<sup>123</sup> *2021 ICS Notice*, 36 FCC Rcd at 9666, para. 324; *2022 ICS Notice* at 44, para. 96; *2023 IPCS Notice* at 24-25, paras. 56-57.

<sup>124</sup> *Public Notice* at 6. Absent a future order adjusting the retention period, providers shall retain any such documentation until any rules the Commission adopts to implement the Martha Wright-Reed Act have become effective and are no longer subject to judicial review.

reliability and accuracy of any such data. It will minimize burdens by not requiring the submission of such documentation with providers' responses but only requiring the retention and subsequent production of the relevant documents upon request—documents which providers would likely retain in the normal course of business. No commenters challenged this aspect of our proposal. We find that this requirement will help ensure that the Commission will be able to evaluate the accuracy and reliability of the data submitted while adding only a minimal additional burden on providers.

## 5. Admissions, Releases, and Turnover Rates

50. We modify the Excel template to make the questions regarding facility-specific total admissions, total releases, and weekly turnover rates optional. In the *Third Mandatory Data Collection Order*, WCB and OEA identified these metrics as important to helping the Commission correct for the possibility that other population metrics, such as average daily population, might not fully account for all the costs of providing audio IPCS at smaller jails.<sup>125</sup> We therefore required the submission of facility-specific data on admissions, releases, and weekly turnover rates as part of the Third Mandatory Data Collection and, in the *Public Notice*, proposed to incorporate that requirement into the 2023 Mandatory Data Collection.<sup>126</sup> However, our review of providers' responses to the Third Mandatory Data Collection,<sup>127</sup> as well as comments on the proposed instructions,<sup>128</sup> make clear that requiring these data would impose a significant burden on providers without producing meaningful results, due in large part to difficulties providers encounter in obtaining accurate data from correctional officials.<sup>129</sup>

51. As one commenter explains, "IPCS providers do not track or have adequate information to respond to questions about 'weekly turnover,' 'total admissions,' or 'total releases' at each correctional facility they serve."<sup>130</sup> Another provider explains that it has "no way of gauging the accuracy of this data or whether the sample size was useful."<sup>131</sup> In attempting to balance competing considerations regarding the potential importance of these data and the relative inaccessibility, we make the reporting of this information optional. This approach will reduce the burdens on providers,<sup>132</sup> while still allowing them to report this information where possible.<sup>133</sup>

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<sup>125</sup> *Third MDC Order*, 37 FCC Rcd at 372 n.37 (finding that this information will help correct issues in reported data for population metrics and citing the *2021 ICS Notice*, 36 FCC Rcd at 9662-63, para. 319, for its discussion on the impact of turnover rates between jails with ADP's below 1,000 and higher population facilities); *see also 2021 ICS Notice*, 36 FCC Rcd at 9962-63, para. 319 (establishing the points that generally jails with ADPs smaller than 1,000 face higher admissions and turnover rates than facilities with larger populations and noting one provider's estimated weekly turnover rates representing a significant disparity in this relationship between jails and prisons).

<sup>126</sup> *Third MDC Order*, 37 FCC Rcd at 371-72, paras. 11-12; *2023 MDC Proposed Instructions* at 44.

<sup>127</sup> Multiple providers indicated they did not track the data and were unable to obtain them from correctional officials.

<sup>128</sup> Securus Comments at 6-7 (discussing issues with reporting of facility-specific demand data including turnover data and arguing that the Department of Justice's, Office of Justice Programs, Bureau of Justice Statistics' datasets on turnover rate is "likely to be superior to anything providers can glean in hit-or-miss efforts"); ViaPath Comments at 7 (listing issues with collecting this information generally).

<sup>129</sup> *Id.* at 6 (explaining the efforts Securus undertook to report turnover rate and related data for the Third Mandatory Data Collection and the results of those efforts).

<sup>130</sup> ViaPath Comments at 7.

<sup>131</sup> Securus Comments at 6 (discussing its view of the data received from the "small fraction" of facilities that responded to its queries for these data).

<sup>132</sup> *See id.* at 7 (stating that "[t]he Commission can ease some of the burden by eliminating the obligation to gather this data (or at least make it optional)").

## 6. Bundling

52. We modify the Word template to obtain specific information on the extent to which providers bundle IPCS with nonregulated services and on the steps providers employ to ensure that the costs of their nonregulated services are not allocated to IPCS or associated ancillary services.<sup>134</sup> Although we did not explicitly include questions about bundling in our proposals, in the *Public Notice*, we sought comment on whether there were “additional data” that providers should be required to submit in response to the Mandatory Data Collection.<sup>135</sup> The Wright Petitioners explain that bundling data are needed because providers offer different services that “may or may not be bundled together when reporting the data,”<sup>136</sup> potentially inflating the costs reported for regulated services.

53. We agree that data on service bundles will assist the Commission in understanding what services are provided and how they are provided, and, most importantly, in establishing just and reasonable IPCS rates. We therefore add questions to the Word template that direct each provider to report, among other information, whether it offers regulated and nonregulated services as a bundle and, if so, to identify each of the components included in the bundle; to identify which components are regulated or nonregulated and the standalone price of each component; to state whether bundling affects the provider’s overall costs and, if so, how; and to indicate whether the provider’s bundling practices vary by facility or by contract.

## 7. Financial Reports

54. We adopt our proposal to require all providers to submit audited financial statements or reports for 2022, or, in the absence of an audited financial statement or report, similar financial documentation for 2022 to the extent produced in the ordinary course of business.<sup>137</sup>

### D. Timeframe for Provider Responses to the Data Collection

55. In the *Public Notice*, we sought comment on our proposal to require providers to file their responses to the data collection within 90 days of the release of this Order.<sup>138</sup> The proposed timeframe, which admittedly is somewhat shorter than the timeframe for the previous mandatory data collection,<sup>139</sup> reflects the time constraints the Martha Wright-Reed Act imposes for “promulgat[ing] any regulations necessary to implement” the Act.<sup>140</sup>

(Continued from previous page) \_\_\_\_\_

<sup>133</sup> Because we make this this requirement optional, we do not address Securus’s suggestion that the Commission rely on potentially relevant data from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. *Id.* at 6-7.

<sup>134</sup> Wright Petitioners Comments, Brattle Report at 20, para. 37 (“When the same provider supplies a regulated and unregulated product, especially when the unregulated product is a necessary input to the regulated service, the provider can charge monopoly prices in the unregulated market. For IPCS, if there are regulations on video calling and the calling requires the use of tablets, the providers can charge monopoly prices for the unregulated services and each supernormal profits.”).

<sup>135</sup> *Public Notice* at 7.

<sup>136</sup> Wright Petitioners Comments, Brattle Report at 7 n.11 (“For example, some providers offer video calling through tablets but these tablets also offer a wide range of additional ‘enhanced services’, such as games, books, movies, e-messaging, and picture/video messaging.”).

<sup>137</sup> *2023 MDC Proposed Instructions* at 4-5. We note that this exception for the ordinary course of business is only applicable to the submission of this alternative documentation and does not extend to other requirements of the data collection, and we remind providers to follow the instructions for each section of the data collection.

<sup>138</sup> *Public Notice* at 9.

<sup>139</sup> *Third MDC Order*, 37 FCC Rcd at 385, para. 46 (requiring responses in 120 days).

<sup>140</sup> Martha Wright-Reed Act § 3(a).

56. Providers instead propose requiring responses to the data collection 120 days following release of this Order.<sup>141</sup> ViaPath asserts that “[p]roviders need a reasonable amount of time to complete the report”<sup>142</sup> and Securus comments that “90 days is an insufficient period of time” to respond to the data collection.<sup>143</sup> ViaPath contends that “a slight extension of the MDC filing deadline is reasonable.”<sup>144</sup> We agree with ViaPath and establish October 31, 2023 as the date on which provider responses will be due, unless final PRA authority for this collection is not granted prior to then. Given the date of release of this Order, this represents an extension of an additional week from the originally proposed 90-day deadline, which, while not as extensive as sought, will nonetheless allow providers additional time to prepare their submissions. We find that granting this extension will still provide the Commission with sufficient time to promulgate regulations to implement the Martha Wright-Reed Act consistent with the Act’s time constraints.

### **E. Digital Equity and Inclusion**

57. As part of our continuing effort to advance digital equity for all,<sup>145</sup> including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, we invited comment on any equity-related considerations<sup>146</sup> and benefits (if any) that may be associated with the proposals and issues associated with the data collection.<sup>147</sup> Specifically, we sought comment on how our proposals for that collection may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

58. We conclude that the Mandatory Data Collection adopted here will promote digital equity, particularly for incarcerated people and their families. In recent years, the Commission has collected data from providers of calling services for incarcerated people as part of its ongoing efforts to establish just and reasonable rates for those services that reduce the inequitable financial burdens unreasonable rates impose on incarcerated people and their loved ones, while ensuring that providers are fairly compensated for their services.<sup>148</sup> The information IPCS providers submit in their data collection responses will help the Commission advance these goals in accordance with the Communications Act and

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<sup>141</sup> ViaPath Comments at 2; Securus Comments at 5; Pay Tel Reply at 5; ViaPath Reply at 3; Securus Reply at 9; *but see* Wright Petitioners Reply at 6 (“urg[ing] the Commission to retain the proposed 90-day requirement”).

<sup>142</sup> ViaPath Comments at 3; *see also* Pay Tel Reply at 5 (explaining that “[a]dditional time to prepare data collection submissions would help alleviate [the data collection’s burden] by facilitating staffing flexibility and allowing for deconfliction with other reporting deadlines”).

<sup>143</sup> Securus Comments at 5-6; *see also* ViaPath Reply at 3 (“The proposed 90-day response deadline is insufficient.”).

<sup>144</sup> ViaPath Comments at 3.

<sup>145</sup> Section 1 of the Communications Act provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

<sup>146</sup> The term “equity” is used here consistent with Executive Order 13985 as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

<sup>147</sup> *Public Notice* at 9-10.

<sup>148</sup> *Supra* note 9.

the Martha Wright-Reed Act.

#### IV. PROCEDURAL MATTERS

59. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>149</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>150</sup> Accordingly, we have prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Order* on small entities. The Supplemental FRFA supplements the Final Regulatory Flexibility Analyses completed by the Commission in the *Rates for Interstate Inmate Calling Services* proceeding and is set forth in Appendix B.

60. *Final Paperwork Reduction Act Analysis.* The Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to 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.<sup>151</sup> We have assessed the effects of the data collection on small business concerns, including those having fewer than 25 employees, and find that to the extent such entities are subject to the collection, any further reduction in the burden of the collection would be inconsistent with the objectives behind the collection.

#### V. ORDERING CLAUSES

61. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 155(c), 201(b), 218, 220, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 155(c), 201(b), 218, 220, 255, 276, 403, and 617 and the authority delegated in sections 0.21, 0.91, 0.201(d), 0.271, and 0.291 of the Commission’s rules, 47 CFR §§ 0.21, 0.91, 0.201(d), 0.271, 0.291 and paragraphs 84 and 85 of the *2023 IPCS Order*, this Order IS ADOPTED.

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<sup>149</sup> 5 U.S.C. §§ 601–612. 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. 857 (1996).

<sup>150</sup> 5 U.S.C. § 605(b).

<sup>151</sup> *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).

62. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, 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 Harkrader  
Chief  
Wireline Competition Bureau

Giulia McHenry  
Chief  
Office of Economics and Analytics

**APPENDIX A****2023 Mandatory Data Collection Instructions,  
Templates, and Certification Form**

The instructions, templates, and certification form for the 2023 Mandatory Data Collection are available through this link: <https://www.fcc.gov/2023-ipc-mandatory-data-collection>.



## APPENDIX B

**Supplemental Final Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *2023 Mandatory Data Collection Public Notice*, released in April 2023.<sup>2</sup> The Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) (collectively, WCB and OEA) sought written public comment on proposals in the *Public Notice*, including comment on the Supplemental IRFA. No comments were filed addressing the Supplemental IRFA.<sup>3</sup> The *Public Notice* sought comment on proposals to implement the 2023 Mandatory Data Collection in the Commission's Incarcerated People's Communications Services (IPCS) proceeding and supplements the Final Regulatory Flexibility Analyses completed by the Commission in the *Rates for Interstate Inmate Calling Services* and other Commission orders pursuant to which this data collection will be conducted.<sup>4</sup> This present Supplemental FRFA conforms to the RFA.<sup>5</sup>

**A. Need for, and Objectives of, the Order**

2. In the Order, WCB and OEA adopt policies and specific requirements to implement the forthcoming 2023 Mandatory Data Collection for IPCS.<sup>6</sup> In the *2023 IPCS Order*, the Commission adopted a new data collection requirement.<sup>7</sup> The Commission determined that this data collection would enable it to “meet both [its] procedural obligations (to consider certain types of data) and [its] substantive responsibilities (to set just and reasonable rates and charges)” under the Martha Wright-Reed Act and the Communications Act of 1934, as amended (the Communications Act).<sup>8</sup> Likewise, it directed WCB and

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

<sup>2</sup> *WCB and OEA Seek Comment on Proposed 2023 Mandatory Data Collection for Incarcerated People's Communication Services*, WC Docket Nos. 23-62, 12-375, Public Notice, DA 23-355, at 13, Appx. B (Supplemental Initial Regulatory Flexibility Analysis) (WCB/OEA Apr. 28, 2023) (*2023 IPCS Mandatory Data Collection Public Notice* or *Public Notice*); *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Notice of Proposed Rulemaking and Order, FCC 23-19, at 33, paras. 84 (2023) (*2023 IPCS Notice* or *2023 IPCS Order*).

<sup>3</sup> *Public Notice* at 10-11.

<sup>4</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14201, Appx. C (Final Regulatory Flexibility Analysis) (2013) (implementing the First Mandatory Data Collection); *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, 12944, Appx. E (Final Regulatory Flexibility Analysis) (2015) (implementing the Second Mandatory Data Collection); *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519, 9668, Appx. C (Supplemental Final Regulatory Flexibility Analysis) (2021) (implementing the Third Mandatory Data Collection).

<sup>5</sup> See 5 U.S.C. § 604.

<sup>6</sup> In the *2023 IPCS Order*, the Commission ordered a new mandatory data collection to ensure the proper implementation of the Martha Wright-Reed Act. *2023 IPCS Order* at 33, para. 84; Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (Martha Wright-Reed Act or the Act). The accompanying *2023 IPCS Notice* included an Initial Regulatory Flexibility Analysis. *2023 IPCS Notice* at 38, Appx. A (Initial Regulatory Flexibility Analysis). The *2023 IPCS Mandatory Data Collection Public Notice* also included a Supplemental Initial Regulatory Flexibility Analysis. *2023 IPCS Mandatory Data Collection Public Notice* at 13, Appx. B (Initial Regulatory Flexibility Analysis).

<sup>7</sup> *2023 IPCS Order* at 33, para. 85.

<sup>8</sup> *2023 IPCS Order* at 33, para. 84.

OEA “to update and restructure the most recent data collection as appropriate to implement the Martha Wright-Reed Act.”<sup>9</sup>

3. The Order determines the overall scope of the data collection including: limiting the data collection reporting period to calendar year 2022; defining cost reporting and cost allocation methodologies; defining reporting categories; requiring providers to allocate safety and security measures among seven categories; requiring that providers submit additional information for video IPCS; and adding questions concerning company-wide and facility-level site commissions. The Order also clarifies specific instructions for data collection to provide clarity for the providers completing the forms. Finally, the Order establishes that providers must submit responses by October 31, 2023. Pursuant to their delegated authority, WCB and OEA have prepared instructions, reporting templates, and a certification form for the 2023 Mandatory Data Collection<sup>10</sup> and are issuing this Order to adopt all aspects of these documents.

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

4. There were no comments filed that specifically addressed the proposed rules and policies presented 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.<sup>11</sup> The Chief Counsel did not file any comments in response to the rules and policies proposed in the Supplemental IRFA.

**D. Description and Estimate of the Number of Small Entities to Which the 2023 Mandatory Data Collection Will Apply**

6. 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 2023 Mandatory Data Collection. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>12</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>13</sup> A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>14</sup>

7. As noted above, an IRFA was incorporated in the *2023 IPCS Notice*.<sup>15</sup> In that analysis, the Commission described in detail the small entities that might be affected. Accordingly, in this Order,

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<sup>9</sup> *Id.*

<sup>10</sup> *See* Appx. A, *supra*.

<sup>11</sup> 5 U.S.C. § 604(a)(3).

<sup>12</sup> *See id.* § 601(6).

<sup>13</sup> *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.”

<sup>14</sup> *See* 15 U.S.C. § 632.

<sup>15</sup> *2023 IPCS Notice* at 38, Appx. A (Initial Regulatory Flexibility Analysis); *2023 IPCS Mandatory Data Collection Public Notice* at 13, Appx. B (Initial Regulatory Flexibility Analysis).

for the Supplemental FRFA, we incorporate by reference from these previous Regulatory Flexibility Analyses the descriptions and estimates of the number of small entities that may be impacted by the *Order*.

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

8. The 2023 Mandatory Data Collection will impose new or modified reporting, recordkeeping and other compliance obligations on small entities. The *Order* requires IPCS providers to submit data and other information on, among other matters, calls, demand, operations, company and contract information, information about facilities served, revenues, site commission payments, the costs of safety and security measures, video IPCS, and ancillary fees. WCB and OEA estimate that approximately 30 IPCS providers will be subject to this one-time reporting requirement. In the aggregate, WCB and OEA estimate that responses will take approximately 7,950 hours and cost approximately \$493,224.

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

9. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.”<sup>16</sup>

10. The 2023 Mandatory Data Collection is a one-time collection and does not impose a recurring obligation on providers. Because the Commission’s *2023 IPCS Order* requires all IPCS providers to comply with the 2023 Mandatory Data Collection,<sup>17</sup> the collection will affect smaller as well as larger IPCS providers. WCB and OEA have taken steps to ensure that the data collection template is competitively neutral and not unduly burdensome for any set of providers and have considered the economic impact on small entities in finalizing the instructions and the template for the 2023 Mandatory Data Collection. For example, the 2023 Mandatory Data Collection requires the collection of data for a single calendar year instead of three calendar years, as in previous data collection. In response to the comments, WCB and OEA have refined certain aspects of the data collection, including modifying the treatment of audio IPCS and safety and security measures, clarifying the reporting of costs related to site commissions, and revising certain proposed definitions. WCB and OEA have also revised instructions for cost reporting and cost allocation that will help the Commission understand the nature of the reported costs, without imposing significant additional burdens on providers. WCB and OEA reorganized instructions for our proposed seven-category framework for reporting safety and security measure costs to simply them and increase clarity. Further, the instructions for the data collection include relevant diagrams to facilitate providers’ responses and improve the accuracy and consistency of the data they report. The instructions allow, but do not require, providers to subdivide their audio and video IPCS costs into more discrete categories based on the type of audio or video service being provided, as some parties suggest, to give providers greater flexibility in reporting these costs.

11. WCB and OEA considered but rejected alternative proposals to allow providers to use their own allocation methodologies because of the undue burden it would have on the interested parties and the Commission to analyze and correct inconsistent responses. The modifications adopted in the *Order* avoid unduly burdening small and other responding providers while ensuring that providers have sufficiently detailed and specific instructions to respond to the data collection. The data collection also

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<sup>16</sup> 5 U.S.C. § 604(a)(6).

<sup>17</sup> *2023 IPCS Order* at 33, para. 84.

makes certain questions optional to reduce reporting burdens, including the questions regarding correctional facility-specific total admissions, total releases, and weekly turnover rates.

**G. Report to Congress**

12. The Commission will send a copy of the Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>18</sup> 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.<sup>19</sup>

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<sup>18</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>19</sup> *See id.* § 604(b).