



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU REMINDS PROVIDERS OF INMATE CALLING SERVICES OF THE APRIL 1, 2019 DEADLINE FOR ANNUAL REPORTS AND CERTIFICATIONS

### WC Docket No. 12-375

By this Public Notice, the Wireline Competition Bureau (Bureau) reminds providers of inmate calling services (ICS) that the deadline for the submission of annual reports and certifications, required pursuant to section 64.6060 of the Commission's rules, is April 1, 2019.<sup>1</sup> The forms and instructions for the annual reports and certifications are available at <https://www.fcc.gov/general/ics-data-collections>.<sup>2</sup> All required data should be submitted using the Commission's template<sup>3</sup> and in a format that is machine-readable and manipulatable.<sup>4</sup> Public versions of the reports shall be filed using the Commission's Electronic Comment Filing System (ECFS),<sup>5</sup> by accessing ECFS at <https://www.fcc.gov/ecfs/>.

Confidential data may be filed pursuant to the *Protective Order* adopted in this proceeding.<sup>6</sup> By designating documents and information as confidential under the *Protective Order*, an ICS provider will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission's rules.<sup>7</sup> No further action is required, unless concerns are raised by the Commission or a member of the public.

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<sup>1</sup> 47 CFR § 64.6060.

<sup>2</sup> FCC Forms 2301(a) (reporting) and 2301(b) (certification); *see also* Letter from Pamela Arluk, Chief, Pricing Policy Division, Wireline Competition Bureau, FCC, to Marcus Trathen, Counsel for PayTel Communications, Inc., WC Docket No. 12-375, 31 FCC Rcd 4154 (WCB 2017) (responding to a request for clarification of aspects of the annual reporting requirements).

<sup>3</sup> Instructions for Completing the Inmate Calling Services Annual Reporting Form at 1 (FCC Form 2301(a)), available at <https://www.fcc.gov/general/ics-data-collections> (ICS Annual Reporting Form Instructions).

<sup>4</sup> In light of the court's decision in *Global Tel\*Link v. FCC*, providers are not required to answer questions that seek specific information regarding video visitation services. *See Global Tel\*Link v. FCC*, 859 F.3d 39, 58 (D.C. Cir. 2017), *clarified and amended*, 866 F.3d 397, 415 (D.C. Cir. 2017) (vacating the requirement in section 64.6060(a)(4) of the Commission's rules that ICS providers report "[m]inutes of use, per-minute rates and ancillary service charges for video visitation services").

<sup>5</sup> *See* ICS Annual Reporting Form Instructions; Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

<sup>6</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, 28 FCC Rcd 16954 (WCB 2013) (*Protective Order*).

<sup>7</sup> *Id.* at 16995, para. 3.

Any request for confidential treatment must adhere to the standard set forth in section 0.459(b) of the Commission's rules.<sup>8</sup> In this regard, we note that redacting a report in its entirety except for the contact information in Section I does not comply with the Commission's rules or the *Protective Order*. Further, as described in the *Protective Order*, "Confidential Information," is, among other requirements, "information that is not available from publicly available sources."<sup>9</sup> If a record is publicly available, it is not entitled to confidential treatment.<sup>10</sup>

The lack of public availability of a record is a necessary, but not sufficient, condition to justify withholding information from public inspection. Accordingly, even for information that has not been otherwise disseminated to the public, to be designated as confidential, that information must concern a service that is subject to competition and the disclosure of the information must likely result in substantial competitive harm.<sup>11</sup>

Based on staff review of prior reports, we are particularly concerned about redaction of two types of information: ICS rates and ancillary service charges. The Commission's consumer disclosure rules require ICS providers to "conspicuously disclose" their rates and ancillary service charges to consumers "on their Web sites or in another reasonable manner readily available to consumers."<sup>12</sup> Because the Commission's rules *require* this information to be made publicly available, it is, by definition, not confidential information; and, thus, information about rates and ancillary service charges is presumptively not entitled to confidential treatment, absent a compelling justification for specific redactions.

In addition, we are likely to have concerns if information about average daily population is redacted from a provider's publicly-available annual report. Average daily population is not directly related to the provisioning of ICS and does not appear to be competitively sensitive. Moreover, it appears that the average daily population of at least some facilities is publicly available on the internet.<sup>13</sup> Accordingly, absent additional contextual information, average daily population is not entitled to confidential treatment.<sup>14</sup>

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<sup>8</sup> 47 CFR § 0.459(b); *see id.* § 0.459(c) (specifying that "[c]asual requests [for confidential treatment] (including simply stamping pages 'confidential') . . . will not be considered").

<sup>9</sup> *See Protective Order*, 28 FCC Rcd at 16954, para. 2.

<sup>10</sup> *Protective Order*, 28 FCC Rcd at 16955, para. 2.

<sup>11</sup> *See* 47 CFR § 0.459(b)(4)-(5).

<sup>12</sup> 47 CFR § 64.6110; *2015 ICS Order*, 30 FCC Rcd at 12895-96, 12918, paras. 278-80, 336.

<sup>13</sup> *Compare, e.g.*, Clark County Detention Center 2015 Annual Report, Clark County Detention Center & Las Vegas Metropolitan Police Department at 16, [https://www.lvmpd.com/en-us/Documents/CCDC-Annual-Report-2015\\_FINAL.pdf](https://www.lvmpd.com/en-us/Documents/CCDC-Annual-Report-2015_FINAL.pdf) (average daily population of 3759 for the Clark County Detention Center in 2015), *and* Michaelangelo Conte, Here's how much the Hudson County jail population has dropped since bail reform law (Apr. 7, 2017), [https://www.nj.com/hudson/index.ssf/2017/04/jail\\_population\\_continues\\_to\\_drop\\_under\\_bail\\_reform.html](https://www.nj.com/hudson/index.ssf/2017/04/jail_population_continues_to_drop_under_bail_reform.html) (average daily population of 1167 for the Hudson County jail as of March 31, 2017), *with* CenturyLink Annual Report (Mar. 29, 2018) (redacting the average daily population for the Clark County Detention Center), *and* Global Tel\*Link Annual Report (May 7, 2018) (redacting the average daily population for the Hudson County jail). We also note that information about average daily population for prisons is widely available, casting further doubt on claims that average daily population should be considered confidential. *See e.g.*, Monthly Statistical Report for April 2017, Alabama Department of Corrections at 4, <http://www.doc.state.al.us/docs/MonthlyRpts/2017-04.pdf> (listing monthly average daily population for Alabama prisons).

<sup>14</sup> *See Protective Order*, 28 FCC Rcd at 16955, para. 2.

Under the *Protective Order*, where the designation of information as confidential is challenged, either by a member of the public or the Commission, filers are required to provide detailed reasoning for why the information should be withheld from public inspection.<sup>15</sup> A conclusory assertion that the information is allegedly sensitive commercial or financial information will not suffice.<sup>16</sup> Nor is merely parroting the wording of the relevant rule sufficient to justify a redaction. In providing such explanations, we expect providers to distinguish their situations from those of other ICS providers that have disclosed similar information.<sup>17</sup>

Unwarranted redactions limit the utility of the annual reports by preventing public access to the redacted information, contrary to the goals of the *2015 ICS Order*.<sup>18</sup> Interested parties, including but not limited to inmates and their families, should have ready access to all non-confidential information submitted as part of the annual reports. We therefore take these requirements very seriously. We also note that even where information *may* be withheld from the public because it is commercially sensitive, the Commission may nonetheless make it publicly available if the considerations favoring disclosure outweigh the considerations favoring non-disclosure.<sup>19</sup>

Based on the standards for confidential treatment set forth in the *Protective Order* and the Commission's rules, the Bureau expects that the *entirety* of each annual report will be filed *publicly* via ECFS, with only the following categories of information arguably suitable for designation as confidential or propriety, and, thus, potentially eligible for redaction from public inspection:

- Narrative descriptions;
- Number of times an ancillary fee has been charged;
- Monthly amount of variable site commissions;
- Fixed site commissions required by contract;
- Number of disability-related calls; and
- Number of times an ancillary fee has been charged in connection with a disability-related call.

Even these categories, however, will not automatically be entitled to confidential treatment. For example, whether a narrative description should be redacted will depend on the substance of the information included in the narrative. We also note that information about site commissions is often available in contracts or other documents that may be available to the public and, therefore, may not be entitled to confidential treatment.<sup>20</sup>

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<sup>15</sup> See *Protective Order*, 28 FCC Rcd at 16955, para. 3; 47 CFR § 0.459(b).

<sup>16</sup> Cf. CenturyLink Annual Report, Appx. A (March 30, 2018) (complying with the *Protective Order* and explaining in an Appendix why each of the categories of information redacted in its public report merit confidential treatment). While we have not ruled on the substance of CenturyLink's claims for confidential treatment, we note that CenturyLink appears to have made a good-faith attempt to comply with the Commission's rules and offer a justification for seeking confidential treatment of the limited amount of the information it redacted from its public filing. See *id.*

<sup>17</sup> See, e.g., Hawaiian Telcom Annual Report (Mar. 20, 2018); Securus Technologies Annual Report (Apr. 2, 2018); Synergy Telecom Service Company Annual Report (Mar. 28, 2018).

<sup>18</sup> See *Rates for Interstate Inmate Calling Services, Second Report and Order and Third Further Notice of Proposed Rulemaking*, 30 FCC Rcd 12763, 12892, paras. 269-71 (2015) (*2015 ICS Order*).

<sup>19</sup> See 47 CFR § 0.461(f)(4).

<sup>20</sup> See, e.g., *2015 ICS Order*, 30 FCC Rcd at 12821, n.392 (citing public filings revealing various site commission requirements).

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