



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU AND CONSUMER GOVERNMENTAL AFFAIRS BUREAU SEEK COMMENT ON REVISIONS TO PROVIDERS' ANNUAL REPORTING AND CERTIFICATION REQUIREMENTS

WC Docket Nos. 23-62, 12-375

Comment Date: [30 days after publication in the Federal Register]

Reply Comment Date: [45 days after publication in the Federal Register]

By this Public Notice, the Wireline Competition Bureau (WCB) and the Consumer and Governmental Affairs Bureau (collectively, the Bureaus) seek comment on proposed revisions to the instructions and templates for the Annual Reports and Annual Certifications that the Commission requires certain providers of incarcerated people's communications services (IPCS) to submit.¹ IPCS providers that are classified as inmate calling services (ICS) providers under the Commission's rules are required to make these filings to enable the Commission to monitor and track trends in the IPCS marketplace, increase provider transparency, and ensure compliance with the Commission's rules.² In issuing this Public Notice, we propose changes to reflect expanded reporting requirements regarding access to IPCS by persons with communication disabilities, including Telecommunications Relay Service (TRS) access,³ and the addition of video IPCS data necessary to help implement the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act).⁴

¹ 47 CFR § 64.6060(a)-(b); *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, Appx. B (Final Rules), at 80, § 64.6060(a)(5)-(7) (Sept. 30, 2022) (*2022 ICS Order*). Amendments to section 64.6060(a)(5)-(7) will not become effective until the Office of Management and Budget (OMB) completes any review that the Bureaus determine is required under the Paperwork Reduction Act (PRA), and the Bureaus provide an effective date by subsequent Public Notice.

² With the Martha Wright-Reed Act's expansion of the Commission's authority beyond calling services to include all audio and video communications services used by incarcerated people, the Commission no longer uses the phrase "inmate calling services" and instead uses the term "incarcerated people's communications services" or "IPCS" to refer to these broader service offerings. *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, at 32, para. 80 (2023); Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (Martha Wright-Reed Act or Act); 47 CFR § 64.6000(s); *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12769, 12891-92, paras. 9, 267-68 (2015) (*2015 ICS Order*); see also 47 CFR §§ 64.6000(j), 64.6060(a). For ease of reference, we refer to carriers required to make these filings as "providers" throughout this Public Notice.

³ See *2022 ICS Order* at 24-26, paras. 47-52. The ICS communication disabilities access rules adopted in the *2022 ICS Order* did not become effective in time to implement changes to the 2023 Annual Report and Certifications.

⁴ Martha Wright-Reed Act; 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d).

In 2015, pursuant to delegated authority,⁵ WCB created standardized reporting templates (FCC Form 2301(a))⁶ for the Annual Report and a related certification of accuracy (FCC Form 2301(b)), as well as instructions to guide providers through the reporting process.⁷ WCB amended the instructions, reporting templates, and certification form in 2020 in order to improve the type and quality of the information collected.⁸ In 2022, WCB again amended the instructions, reporting templates, and certification form to reflect significant reforms to the ICS rules adopted in the *2021 ICS Order*, including lower interim rate caps for interstate ICS calls, new interim rate caps for international ICS calls, and a rate cap structure that requires ICS providers to differentiate between legally mandated and contractually required site commissions.⁹

Subsequent developments now require additional changes to the instructions, reporting templates, and certification form. In the *2022 ICS Order*, the Commission adopted requirements to improve access to communications services for incarcerated people with communication disabilities and expanded the scope of the Annual Reports to reflect those new requirements.¹⁰ Specifically, the Commission required ICS providers to list, at a minimum, for each facility served, the types of TRS that can be accessed from the facility and the number of completed calls and complaints for TTY-to-TTY calls, American Sign Language (ASL) point-to-point video calls, and each type of TRS for which access is provided.¹¹ The Commission also eliminated the safe harbor, adopted in 2015, that had exempted providers from any TRS-related reporting requirements if they either (1) operated in a facility that allowed the offering of additional forms of TRS beyond those mandated by the Commission or (2) had not received any

⁵ *2015 ICS Order*, 30 FCC Rcd at 12891-92, paras. 267-68.

⁶ FCC Form 2301(a) is comprised of an Excel template and a Word template.

⁷ See generally ICS Annual Reporting Form Word Template (Appx. A) (Current), WC Docket No. 12-375 <https://www.fcc.gov/general/ics-data-collections> (last visited Aug. 2, 2023) (Word Template); ICS Annual Reporting Form Excel Template (Appx. B) (Current), WC Docket No. 12-375, <https://www.fcc.gov/general/ics-data-collections> (last visited Aug. 2, 2023) (Excel Template); ICS Annual Reporting and Certification Instructions (Current), WC Docket No. 12-375 <https://www.fcc.gov/general/ics-data-collections> (last visited Aug. 2, 2023) (Instructions) (Certification Instructions); ICS Annual Report Certification Form (Appx. C) (Current), WC Docket No. 12-375, <https://www.fcc.gov/general/ics-data-collections> (last visited Aug. 2, 2023) (Certification Form).

⁸ See *Wireline Competition Bureau Announces OMB Renewal of Information Collection Concerning Inmate Calling Services*, WC Docket No. 12-375, Public Notice, 35 FCC Rcd 1456 (WCB Feb. 19, 2020).

⁹ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519 (2021) (*2021 ICS Order*). The reforms also included expanded consumer disclosure requirements, as well as new reporting requirements for ICS providers seeking waiver of the Commission's interstate and international rates. On December 15, 2021, WCB released a Public Notice proposing to implement the reforms adopted in the *2021 ICS Order*. See *Wireline Competition Bureau Seeks Comment on Revisions to Annual Reporting and Certification Requirements for ICS Providers*, WC Docket No. 12-375, Public Notice, DA 21-1583 (WCB Dec. 15, 2021). After considering the comments and replies submitted in response to the Public Notice, WCB released the *Annual Reports Adoption Order* on June 24, 2022, revising the instructions, reporting template, and certification of accuracy. *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, DA 22-676 (WCB June 24, 2022).

¹⁰ See *2022 ICS Order passim*; 47 CFR § 64.6040(b) (adopting expanded access requirements for incarcerated persons with communication disabilities). Among the numerous reforms, the Commission required all ICS providers to provide access to all relay services eligible for TRS Fund support in any facility where broadband is available and where the average daily population incarcerated in that jurisdiction (i.e., in that city, county, state, or the United States) totals 50 or more persons. See *2022 ICS Order* at 3, para. 3. The Commission also adopted targeted reforms to lessen the financial burden on incarcerated people and their loved ones when using calling services. *Id.* at 3, para. 4.

¹¹ *2022 ICS Order* at 24, para. 48.

complaints related to TRS calls.¹² The Commission found that the safe harbor was no longer appropriate given the expanded reporting requirement for additional forms of TRS, and the importance of transparency regarding the state of accessible communications in incarceration settings.¹³ The Commission delegated authority to the Bureaus to implement the expanded reporting obligations and to develop a reporting form that will most efficiently and effectively elicit the required information.¹⁴

On January 5, 2023, the President signed into law the Martha Wright-Reed Act, 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."¹⁵ The new Act also amends section 2(b) of the Communications Act of 1934, as amended (the 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.¹⁶

The 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 and not later than 24 months after the Act's January 5, 2023 enactment date.¹⁷ The Act also 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."¹⁸ 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.¹⁹

Pursuant to the directive that the Commission implement the new Act and establish just and reasonable rates for IPCS services, the Commission released the *2023 IPCS Notice*, seeking comment on how to interpret the Act's language to ensure that the Commission implements the statute in a manner that fulfills Congress's intent.²⁰ Because the Commission is now required or allowed to consider certain types of costs, the Act contemplates that it would undertake an additional data collection.²¹ To ensure that it has the data necessary to meet its substantive and procedural responsibilities under the Act, the Commission adopted the *2023 IPCS Order* delegating authority to WCB and the Office of Economics and Analytics (OEA) to modify the template and instructions for the most recent data collection to the extent appropriate to timely collect such information to cover the additional services and providers now subject

¹² *Id.* at 25, para. 51 (citing the *2015 ICS Order*, 30 FCC Rcd at 12883, para. 246). A provider that fell within the safe harbor was required to include a certification from an officer of the company stating which prong(s) of the safe harbor it had met. *2022 ICS Order* at 25, para. 51.

¹³ *2022 ICS Order* at 25, para. 51.

¹⁴ *Id.* at 26, para. 52.

¹⁵ Martha Wright-Reed Act § 2(a)(2), (b).

¹⁶ *Id.* § 2(c).

¹⁷ *Id.* §§ 2, 3(a); 47 U.S.C. § 276(b)(1)(A).

¹⁸ Martha Wright-Reed Act § 3(b)(2).

¹⁹ *Id.* § 3(b)(1).

²⁰ *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 (Mar. 17, 2023) (*2023 IPCS Notice* or *2023 IPCS Order*).

²¹ *2023 IPCS Order* at 33-34, paras. 84-85; *Wireline Competition Bureau and Office of Economics and Analytics 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 2 (WCB/OEA Apr. 28, 2023) (*2023 IPCS Mandatory Data Collection Public Notice*).

to the Commission's authority.²² On July 26, 2023, WCB and OEA released an Order adopting instructions, a reporting template, and a certification form to implement the 2023 Mandatory Data Collection.²³

In the *2023 IPCS Order*, the Commission also reaffirmed and updated its prior delegation of authority to the Bureaus to revise the instructions and reporting templates for the Annual Reports.²⁴ Specifically, the Commission delegated to the Bureaus authority to modify, supplement, and update the instructions and templates for the Annual Reports, as appropriate to supplement the information the Commission will receive in response to the 2023 Mandatory Data Collection.²⁵

Below, we seek comment on our proposed revisions to the Annual Report instructions, templates, and certification form, which are necessary to reflect the revised disability access rules adopted in the *2022 ICS Order* and to help implement the Martha Wright-Reed Act to ensure just and reasonable rates for consumers and fair compensation for providers.²⁶

I. OVERALL STRUCTURE OF THE ANNUAL REPORTING AND CERTIFICATION REQUIREMENTS

Pursuant to our delegated authority, we propose to revise the Annual Report instructions, templates, and certification form to be consistent with the Commission's 2022 amendments to the annual reports rule²⁷ and to include the additional services now subject to the Commission's authority under the Martha Wright-Reed Act.²⁸ We also propose minor improvements based on our experience reviewing prior Annual Reports, which has persuaded us that revised instructions would help providers better understand the requirements, making the submitted reports more useful to the Commission and consumers. As a general matter, we propose to maintain the existing Excel-format template and Word-format template for the Annual Reports to better separate individual data items from narrative responses and seek comment on this proposal. We also seek comment on these proposed revisions, generally, and on the specific structure, content, and format of the proposed templates and instructions attached hereto. We likewise propose minor revisions to the certification form. Are there other general changes or additions we should make to gather better or more accurate data or to make the instructions clearer? Is there additional information that we should require providers to submit to enable the Commission to better monitor compliance and industry trends, or increase transparency to the public? Conversely, are

²² *2023 IPCS Order* at 33-34, paras. 84-85.

²³ *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, Order, DA 23-638 (July 26, 2023) (*2023 IPCS Mandatory Data Collection Order*).

²⁴ *2023 IPCS Order* at 34, para. 86.

²⁵ *Id.*; see *2023 IPCS Mandatory Data Collection Public Notice* (seeking comment on the proposed mandatory data collection for IPCS).

²⁶ As in the *2023 IPCS Mandatory Data Collection Order*, we do not seek comment in this proceeding on issues raised by the Commission in the *2023 IPCS Notice*. See *2023 IPCS Mandatory Data Collection Order* at 3-4, para. 9 & n.20; *2023 IPCS Mandatory Data Collection Public Notice* at 2. Comments submitted in response to this Public Notice should not contain advocacy regarding such issues, including how the Commission should interpret the language of the Martha Wright-Reed Act, the appropriate rates for video IPCS, or the appropriate treatment of site commissions. Should the Commission decide in adopting rules implementing the Martha Wright-Reed Act that future annual reports should collect different information, the Bureaus will revise the instructions and templates accordingly in future years.

²⁷ *2022 ICS Order* at 24-26, paras. 47-52; *id.*, Appx. B at 80, § 64.6060(a)(5)-(7).

²⁸ *2023 IPCS Notice*; Martha Wright-Reed Act; 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d). These revised instructions and the associated templates, if adopted, will consolidate and supplant the instructions and templates for earlier iterations of the Annual Report instructions, templates, and certification forms.

there any proposed instructions, inquiries, or data fields that should be removed because they are unnecessary to ensure that providers report uniform and accurate data and other information?

As has been the case with prior Annual Reports, the reporting period is the calendar year immediately preceding the year during which the Annual Report is due.²⁹ Thus, the reporting period for the next Annual Reports due on April 1, 2024 will be January 1, 2023 through December 31, 2023.

A. General Proposals

We seek comment on whether the proposed instructions provide sufficient guidance to ensure that providers use uniform methodologies and report the required information in a consistent manner. Are there any additional changes that would help clarify the instructions, including the definitions, and increase uniformity across providers' responses? We seek comment on all aspects of the proposed instructions, including any proposed revisions not explicitly addressed in this Public Notice.

General Categories of Information Requested. The proposed instructions, like those for prior reports, require providers to submit certain types of information related to their operations, IPCS rates, ancillary service charges, site commissions, and disability access. As a result of the Martha Wright-Reed Act, our proposed instructions would require providers to submit intrastate, interstate, and international information for both audio and video IPCS. Do the proposed instructions describe these categories of data in sufficient detail? Is there additional information that we should require providers to submit in any of these categories to enable the Commission to better monitor compliance and industry trends, or increase transparency to the public? Are there any additional changes we should make to the proposed instructions and templates to make them easier for providers to understand? We seek comment generally on the benefits and burdens of our proposals, and whether additional changes to proposed or existing reporting categories are warranted.

B. Specific Instructions

Definitions. The proposed instructions contain new and revised definitions reflecting the Commission's expanded authority over IPCS. We seek comment on these definitions. Are they sufficiently clear? If not, how should they be modified? Are there any undefined terms we should define? Are there any terms that should be added to the proposed instructions that would help ensure that the Commission receives all relevant data? If so, what are they and how should they be defined? Should any proposed definitions be removed?

Facility and Contract Information. Our proposed instructions include a reference to a new Excel template that moves detailed contract and facility information already collected on multiple worksheets throughout the Excel template to a single worksheet. Collecting this granular information on a single worksheet is intended to help ensure consistent facility and contract-level reporting, and eliminate the need to repeatedly enter such detailed information on other worksheets throughout the Excel template. This change is intended to reduce the amount of duplicative information required throughout the report and consequently reduce the burden on providers. We seek comment on this proposal.

Audio and Video IPCS Rates. The proposed instructions and templates continue to require providers to submit intrastate, interstate, and international IPCS rates for audio services across a number of categories, including: (i) highest 15-minute rate; (ii) highest year-end 15-minute rate; and (iii) average per minute rate.³⁰ For interstate and international rates, we require providers to identify all rates charged

²⁹ 47 CFR § 64.6060(a). For example, for the 2023 Annual Reports and Annual Certifications, the reporting period was January 1, 2022 to December 31, 2022. *Wireline Competition Bureau Reminds Providers of Inmate Calling Services of the April 1, 2023 Deadline for Annual Reports and Certifications*, WC Docket No. 12-375, Public Notice, DA 23-164 (WCB Mar. 1, 2023).

³⁰ Calling Services for Incarcerated People; Annual Reporting and Annual Certification Forms (FCC Forms 2301(a) and 2301(b)); Instructions, WC Docket No. 12-375, at 11-14, <https://www.fcc.gov/general/ics-data-collections> (last visited Aug. 2, 2023) (ICS Annual Reporting and Certification Instructions (Current)).

in excess of the applicable rate caps.³¹ For international rates, we clarify that reported termination charges should reflect the amount billed by the provider to the consumer for termination to each international destination. We seek comment on whether these instructions are sufficiently clear.

To assist the Commission in determining just and reasonable rates for video IPCS, consistent with the Martha Wright-Reed Act, we propose adopting a similar reporting approach for video IPCS. We propose adding new worksheets that collect the same rate information for video IPCS as that collected for audio IPCS. We do not request information on video IPCS rates that exceed a cap, since there is no rate cap for these services at this time. Is this proposed approach the best way to collect information on video IPCS rates? Are there additional rate categories for video IPCS that we should consider? Conversely, are there categories for audio IPCS that should not be included for video IPCS? For example, our proposed worksheets for international video IPCS exclude charges to terminate communications to foreign countries because while these charges apply to audio services, they may not apply to video services. Do parties agree with this adjustment?

Because providers are already familiar with these reporting categories for audio IPCS, we expect that using the same rate reporting approach for video IPCS will help minimize the burdens associated with reporting this additional information regarding their video services. We seek comment on this assessment. Are there other changes we should make to the proposed rate reporting structure that would minimize the burden on providers, without sacrificing any necessary information or transparency? We also propose new questions seeking certain narrative information about the reported rates for video IPCS and seek comment on these proposed revisions.

Our proposed worksheets for video IPCS rate information ask providers to submit information for 15-minute intervals. We propose using a 15-minute interval because this is the rate interval used for collecting data on audio IPCS and using the same interval should allow for more meaningful rate comparisons. In addition, audio call lengths are often limited to around 15 minutes. Do parties agree with use of this session interval to evaluate video IPCS rates? If not, what interval should we use instead? Our proposed Excel template also seeks rate information for both domestic and international video calls. We seek comment on the extent to which domestic video IPCS rates differ from international video IPCS rates. Do we need separate worksheets for domestic video IPCS rates and international video IPCS rates? If we decide to use separate worksheets and some providers have the same rates for domestic and international video IPCS, we propose allowing providers that charge the same rates to opt out of filing a separate worksheet for international video IPCS. We seek comment on this proposed approach.

Finally, the Word template contains questions seeking narrative information about provider operations, facilities, and services, including new questions regarding video IPCS. We seek comment on these new questions. Is there additional information the Commission should seek that would help increase transparency and compliance without imposing unwarranted burdens on providers?

Ancillary Service Charges. The current instructions require providers to report a variety of information about any ancillary service charges they have assessed, and require a narrative explanation concerning any methodologies used to allocate these charges among facilities that are covered by a single contract, where applicable. We propose adding a new worksheet that collects the same ancillary service charge information for video IPCS as that collected for audio IPCS. Do we need separate worksheets for audio and video ancillary service charges or are these charges typically the same? If we decide to use separate worksheets, we propose allowing providers that charge identical ancillary service charges for audio and video IPCS to opt out of filing a separate worksheet for video services. We seek comment on this approach. Is there any additional information we should seek regarding ancillary service charges for audio or video IPCS?

³¹ ICS Annual Reporting and Certification Instructions (Current) at 17.

Site Commissions. The current instructions require providers to report their average total monthly site commission payments on a facility-by-facility basis and to separate those payments between legally mandated and contractually prescribed site commission payments, consistent with the Commission's rules.³² The existing instructions also require providers to subdivide both types of payments between monetary and in-kind payments and, within those subdivisions, to report the portions of the payments that were either fixed or variable. We propose adding a new worksheet that collects the same site commission payment information for video IPCS as that collected for audio IPCS. We seek comment on this approach or whether a different approach should be considered. Is there any additional information we should seek related to site commission payments made in connection with audio IPCS or video IPCS?

To the extent providers pay site commissions for both audio IPCS and video IPCS on a per-provider, per-facility, or per-contract basis, and those site commissions are fixed, we propose requiring providers to allocate such site commission payments between audio IPCS and video IPCS based on their best estimate of the percentage of the total amount of their fixed site commissions attributable to each type of IPCS. We also propose to direct providers to explain, document, and justify, in the Word template, any alternative methodology used to allocate fixed site commission payments between audio IPCS and video IPCS. Do commenters agree with this approach? Why or why not? Should we require a different allocation methodology to help ensure more consistent reporting of fixed site commission payments that apply to multiple services? If so, what methodology should we require and why?

Disability Access and Related Considerations. Our proposed instructions modify providers' reporting obligations regarding the provision of TTY-based TRS and TTY-to-TTY calling for incarcerated people with hearing and speech disabilities, including any ancillary service charges that providers have assessed for or in connection with TTY-based calls. Providers would no longer be required to report the number of dropped calls for TTY-based TRS or TTY-to-TTY calls, but would still be required to report the number of calls and number of complaints related to TTY-based TRS and TTY-to-TTY calls. We also propose updates to the instructions and the Excel template to reflect the 2022 reforms to the Commission's rules.³³ Under the proposed changes to the "Disability Access" worksheet of the Excel template, providers would report, on a facility-by-facility basis, for each of the six kinds of TRS authorized by the Commission,³⁴ (1) whether the service was available for use at the facility during the reporting period, (2) the number of calls made using the service, and (3) the number of complaints regarding the service. The same information would be collected for point-to-point video service and for TTY-to-TTY calling. We seek comment on whether these proposed changes capture all of the information now required by the revised rules.³⁵ If not, what additional changes should we make?

Miscellaneous. The proposed Excel template includes minor changes designed to help reduce burdens and minimize provider error when completing the worksheets. For instance, the proposed template includes "drop-down" menus for data entry when there are only a few answer options. It also includes new cell formatting that restricts the data that can be entered (e.g., numbers vs. text). For the worksheets that include rates paid for IPCS calls to international destinations, we propose to require providers to enter their international destinations only once for each worksheet, instead of repeating this

³² 47 CFR § 64.6030(d).

³³ See 2022 ICS Order, Appx. B at 80, § 64.6060(a)(5)-(7); 47 CFR § 64.6040(b).

³⁴ TRS and the various kinds of TRS are defined in section 64.601 of the Commission's rules. 47 CFR § 64.601. The six kinds of TRS are: Internet Protocol Captioned Telephone Service (IP CTS); Internet Protocol Relay Service (IP Relay); Speech-to-Speech Relay Service (STS); Traditional (TTY-Based) TRS; Video Relay Service (VRS); and Non-Internet Protocol Captioned Telephone Service (Non-IP CTS). *Id.* § 64.601(a)(23), (24), (41), (43), (53); *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121, 16122, para. 3 (2003).

³⁵ 2022 ICS Order, Appx. B at 80, § 64.6060(a)(5)-(7).

information multiple times on each worksheet. We seek comment on these minor modifications. We also seek comment on our proposed minor updates to the certification form (e.g., inserting the word “Authorized” before “Officer”).³⁶ Finally, we ask for suggestions on additional modifications to the instructions, Excel and Word templates, and certification form that would make them clearer and easier to use.

II. PROCEDURAL MATTERS

Filing of Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System. See FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).³⁷

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³⁸

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission’s rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in this Public Notice and the instructions in order to facilitate our internal review process.

People with Disabilities. We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

³⁶ See *infra* Appx. A.

³⁷ The Protective Order issued in this proceeding permits parties to designate certain material as confidential. *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Protective Order, DA 23-298 (WCB Apr. 5, 2023). Filings that contain confidential information should be appropriately redacted and filed pursuant to the procedure described in that Order. See also *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, 35 FCC Rcd 9267 (WCB Sept. 1, 2020) (clarifying non-confidential treatment for certain information).

³⁸ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS Mar. 19, 2020).

Ex Parte Presentations. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules.⁴⁰ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Regulatory Flexibility Act. As required by the Regulatory Flexibility Act,⁴¹ the Commission has prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Public Notice. The Supplemental IRFA supplements the Commission’s Regulatory Flexibility Analyses included in both the 2022 *ICS Order*, and in the 2023 *IPCS Order* and serves to further the process of implementing the revised disability access rules requirements adopted in the 2022 *ICS Order* and in the Martha Wright-Reed Act. The Supplemental IRFA is set forth in Appendix B. The Commission requests written public comments on the Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments provided in this Public Notice. The Commission will send a copy of this Public Notice, including the Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁴² In addition, summaries of this Public Notice and the Supplemental IRFA will be published in the Federal Register.⁴³

Initial Paperwork Reduction Act Analysis. The Public Notice, and the attached instructions and templates, contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the 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.⁴⁴ 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(4), we seek comment on how the Commission will further reduce the information collection burden for small business concerns with fewer than 25 employees.

³⁹ 47 CFR § 1.1200 *et seq.*

⁴⁰ *Id.* § 1.1206(b).

⁴¹ *See* 5 U.S.C. § 603.

⁴² *See id.* § 603(a).

⁴³ *Id.*

⁴⁴ Pursuant to the Paperwork Reduction Act (PRA), we will publish a 60-Day Notice in the Federal Register seeking comment on the proposed annual reporting and certification requirements set forth herein. *See* 44 U.S.C. § 3507. We note that the PRA paperwork for this collection also seeks Office and Management and Budget (OMB) approval for certain rules adopted in the 2022 *ICS Order*. *See* 2022 *ICS Order* at 68, paras. 166-67. We will consider comments submitted in response to both of these Federal Register notices in finalizing this information collection for submission to OMB.

Additional Information. For further information, please contact Amy Goodman, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1549 or via e-mail at Amy.Goodman@fcc.gov or Michael Scott, Consumer and Governmental Affairs Bureau, at (202) 418-1264 or via email at Michael.Scott@fcc.gov.

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APPENDIX A**Proposed Instructions and Templates**

The draft instructions, templates, and certification form for the Annual Reports are available at this link: <https://www.fcc.gov/proposed-2023-ipc-annual-reports>.

APPENDIX B

Supplemental Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Wireline Competition Bureau (WCB) and the Consumer and Governmental Affairs Bureau (CGB) (collectively, the Bureaus) have prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Public Notice to supplement the Commission's Regulatory Flexibility Analyses contained in the *Rates for Interstate Inmate Calling Services*, Order and Notice of Proposed Rulemaking,² and in the *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, Notice of Proposed Rulemaking and Order.³ We request written public comment on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments provided on the first page of the Public Notice.

A. Need for, and Objectives of, the Proposed Rules

2. In the Public Notice, the Bureaus seek comment regarding proposed revisions to the instructions, templates, and certification form for the Annual Reports submitted by providers of incarcerated people's communications services (IPCS).⁴ In issuing the Public Notice, we act pursuant to the Commission's delegation of authority to the Bureaus to modify, supplement, and update the Annual Report instructions, templates, and certification form, as appropriate, to reflect revised rules adopted in the *2022 ICS Order*⁵ and to provide additional information the Commission will need to implement the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act).⁶

3. In the *2022 ICS Order*, the Commission adopted requirements to improve access to communications services for incarcerated people with communication disabilities and expanded the scope of the Annual Reports to reflect these changes.⁷ Under the proposed, expanded reporting requirements, providers would be required to list, at a minimum, for each facility served, the types of Telecommunications Relay Service (TRS) that can be accessed from the facility and the number of completed calls and complaints for TTY-to-TTY calls, American Sign Language (ASL) point-to-point

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

² *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, Appx. C, FCC 22-76, at 82-92 (2022) (*2022 ICS Order*).

³ *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, Appx. A, FCC 23-19 (2023) (*2023 IPCS Notice* or *2023 IPCS Order*).

⁴ These revised instructions, the associated templates, and certification form, if adopted, will consolidate and supplant the instructions, templates, and certification form for earlier iterations of the IPCS Annual Reporting and Certification requirements.

⁵ *2022 ICS Order* at 24-26, paras. 47-52.

⁶ 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); see *2023 IPCS Notice*.

⁷ See *2022 ICS Order* at 24-26, paras. 47-52. Among the numerous reforms, the Commission required all providers to provide access to all relay services eligible for Telecommunications Relay Services (TRS) Fund support in any facility where broadband is available and where the average daily population incarcerated in that jurisdiction (i.e., in that city, county, state, or the United States) totals 50 or more persons. See *id.* at 3, para. 3.

video calls, and each type of TRS for which access is provided.⁸ The Commission also eliminated the safe harbor adopted in 2015 concerning the reporting requirement for TTY-based TRS calls.⁹ Additionally, the Commission delegated authority to the Bureaus to implement the expanded reporting obligations contained in the *2022 ICS Order* and to develop a reporting form that will most efficiently and effectively elicit the required information.¹⁰

4. On January 5, 2023, the President signed the Martha Wright-Reed Act into law, thereby expanding the Commission's statutory authority over communications between incarcerated people and the non-incarcerated to include "any audio or video communications service used by inmates . . . regardless of technology used."¹¹ The new Act also amends section 2(b) of the Communications Act of 1934, as amended (the 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.¹² Further, the Martha Wright-Reed Act also 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 and not later than 24 months after the Act's January 5, 2023 enactment.¹³

5. In accordance with the Martha Wright-Reed Act's directive, the Commission released the *2023 IPCS Notice*, which sought comment on how to best interpret the Act's language in order to ensure the Commission implemented the statute in a manner that fulfills Congress's intent.¹⁴ In the *2023 IPCS Order*, the Commission reaffirmed and updated its prior delegation of authority to the Bureaus to revise the instructions and reporting template for the Annual Reports.¹⁵ Specifically, the Commission delegated authority to the Bureaus to modify, supplement, and update those instructions and templates as appropriate to supplement information WCB will be receiving in response to the 2023 Mandatory Data Collection.¹⁶

6. Pursuant to their delegated authority, the Bureaus have proposed revisions to the instructions, templates, and certification form for the Annual Reports and are issuing the Public Notice to seek comment on all aspects of these proposed changes.

B. Legal Basis

7. The proposed action is authorized pursuant to sections 1, 2, 4(i)-(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151,

⁸ *Id.* at 24, para. 48.

⁹ *Id.* at 25, para. 51.

¹⁰ *Id.* at 26, para. 52.

¹¹ Martha Wright-Reed Act § 2(a)(2), (b).

¹² *Id.* § 2(c).

¹³ *Id.* § 3(a); 47 U.S.C. § 276(b)(1)(A).

¹⁴ See generally *2023 IPCS Notice*. On April 28, 2023, WCB and the Office of Economics and Analytics (OEA) released a Public Notice initiating a new data collection (*2023 IPCS Mandatory Data Collection*) intended to help implement the Martha Wright-Reed Act. *Wireline Competition Bureau and Office of Economics and Analytics Seek Comment on Proposed 2023 Mandatory Data Collection for Incarcerated People's Communications Services*, WC Docket Nos. 23-62, 12-375, Public Notice, DA 23-355 (WCB April 28, 2023) (seeking comment on the proposed mandatory data collection for IPCS).

¹⁵ *2023 IPCS Order* at 34, para. 86.

¹⁶ *Id.* at 33-34, paras. 84-85; see *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, Order, DA 23-638 (WCB/OEA July 26, 2023) (*2023 IPCS Mandatory Data Collection Order*).

152, 154(i)-(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Act, Pub. L. No. 117-338, 136 Stat. 6156 (2022).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

8. 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 proposed Annual Reports 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.”¹⁷ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. noted above,

9. As noted above, Regulatory Flexibility Analyses were incorporated in the *2022 ICS Order*¹⁸ and the *2023 IPCS Notice*.¹⁹ In those analyses, the Commission described in detail the small entities that might be affected. In this Supplemental IRFA, we hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *2022 ICS Order*²⁰ and *2023 IPCS Notice*.²¹

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

10. The Public Notice seeks comment on the specifics of the proposed revisions to the instructions, templates, and certification form to ensure the Commission receives the data it needs for the Annual Reports. The proposed data collection would require certain providers that are classified as inmate calling services providers under the Commission’s rules to submit, among other things, data and other information on providers’ operations, IPCS rates, ancillary services, site commissions, and disability access. The proposed data collection may subject small and other providers to modified or new reporting or other compliance obligations. In addition, we recognize that our actions in this proceeding may affect the reporting, recordkeeping, and other compliance requirements for several groups of small entities. At this time, the Bureaus do not have sufficient information to determine whether the proposed revisions to the Annual Reports data collection will require small entities to hire attorneys, engineers, or other professionals to comply with the new rules. We, however, anticipate the information we receive in comments will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the Public Notice.

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

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such

¹⁷ See 5 U.S.C. § 601(6).

¹⁸ *2022 ICS Order*, Appx. C at 82.

¹⁹ *2023 IPCS Notice*, Appx. A at 38.

²⁰ *2022 ICS Order*, Appx. C at 83-91, paras. 7-21.

²¹ *2023 IPCS Notice*, Appx. A at 38, paras. 5-21.

small entities.”²² We will consider these factors after reviewing any substantive comment we have received from the public and potentially affected small entities.

12. In the Public Notice, the Bureaus have taken steps to minimize the economic impact on small entities and consider alternatives through its proposals that include considering different ways to revise the Annual Reports instructions, templates, and certification form without causing significant economic impact to small entities. For example, the Bureaus propose reporting and certification requirements that are similar to those used in prior Annual Reports data collections. In addition, the standardized templates and instructions simplify compliance with, and reduce the burden of, the information requirements related to submission of the Annual Reports. Further, the Bureaus have taken steps to ensure the instructions, annual reporting templates, and certification form are competitively neutral and are not unduly burdensome for all providers. Finally, the Public Notice proposes to allow providers that charge the same rates for domestic and international video IPCS to opt out of filing a separate spreadsheet for international video IPCS, thus reducing the regulatory burden to providers. We will also consider any significant economic impact to small entities that may be raised in comments filed in response to the Public Notice and Supplemental IRFA.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

13. None.

²² 5 U.S.C. § 603(c)(1)-(4).