

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

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

ORDER

Adopted: May 8, 2017

Released: May 8, 2017

By the Acting Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) grants, in part, the motion Securus Technologies, Inc. (Securus) filed in this docket seeking an extension of time to submit annual reports regarding inmate calling services (ICS). We find that good cause exists to temporarily waive the current deadline and give ICS providers until July 1, 2017, to file the annual reports and certifications required by 47 CFR § 64.6060.

2. Background: On November 5, 2015, the Federal Communications Commission (Commission) released the Rates for Interstate Inmate Calling Services, Second Report and Order and Third Further Notice of Proposed Rulemaking. In that item, the Commission charged the Bureau with implementing an annual reporting and certification requirement for ICS providers. The 2015 ICS Order set April 1 as the annual reporting deadline and specified that the first report would be due following publication of Office of Management and Budget (OMB) approval of the relevant rule.

3. OMB approved the reporting and certification requirements on January 9, 2017, and notice of that approval was published in the Federal Register on March 1, 2017. Accordingly, the reporting rules adopted in the 2015 ICS Order went into effect that day, and the first reports should have been due on April 1, 2017. On March 2, 2017, however, the Bureau issued a Public Notice in which it granted, on its own motion, an extension of the reporting deadline to June 1, 2017.

1 Securus Technologies, Inc. Motion for Extension, WC Docket No. 12-375 (filed Mar. 10, 2017) (Motion for Extension).

2 See 47 CFR § 0.91(b) (delegating to the Bureau the authority to act on requests for interpretation or waiver of rules); see also 47 CFR §§ 0.291, 1.3.

3 Rates for Interstate Inmate Calling Services, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (2015) (2015 ICS Order).

4 2015 ICS Order, 30 FCC Rcd at 12890-93, paras. 263-73; 47 CFR § 64.6060.

5 2015 ICS Order, 30 FCC Rcd at 12918, para. 336 (ordering that the rules involving Paperwork Reduction Act (PRA) burdens "will take effect immediately upon publication of Office of Management and Budget approval"); 47 CFR § 64.6060(a) ("Providers must submit a report to the Commission, by April 1 of each year, regarding interstate, intrastate, and international Inmate Calling Services for the prior calendar year.").

6 82 Fed. Reg. 12182 (March 1, 2017); see also 82 Fed. Reg. 12992 (March 8, 2017) (correcting the earlier notice).

7 Wireline Competition Bureau Announces Due Dates for Inmate Calling Services Information Collections and Consumer Disclosure Requirements, WC Docket No. 12-375, Public Notice, DA 17-209 (WCB Mar. 2, 2017) ("The 2015 ICS Order set April 1 as the annual reporting deadline. Because OMB approval was not published in the Federal Register until March 1, we grant, on our own motion, a one-time extension of the deadline until June 1,

(continued....)

4. *Discussion:* On March 10, 2017, Securus filed a motion asking the Commission to “hold that ICS providers should file their first annual report on April 1, 2018 . . . [or] in the alternative . . . extend the deadline for reporting 2016 data until September 1, 2017.”⁸ In support of its motion, Securus points to paragraph 268 of the *2015 ICS Order*, in which the Commission stated that “[t]he first annual report will be due after the Commission publishes Office of Management and Budget (OMB) approval pursuant to the Ordering Clauses below. If, for example, OMB approval is granted in 2016 then the first annual report and certification . . . will be due on April 1, 2017”⁹ Securus contends that this language requires that the first reporting deadline be on April 1 in the year that follows OMB approval, and that the Bureau’s “decision to set a deadline of June 1[, 2017,] contravenes the full Commission’s language.”¹⁰ Securus also argues that, because the *2015 ICS Order* remains under review in the Court of Appeals for the D.C. Circuit,¹¹ compliance with the reporting requirements would be a “burdensome waste.”¹² Nonetheless, if the Commission does not agree that the appropriate deadline is April 1, 2018, “Securus suggests that September 1, 2017. . . would be the appropriate new deadline given the amount of data that Rule 64.6060 demands and the present lack of finality in the underlying ICS rules.”¹³

5. Several ICS providers submitted comments in support of Securus’s motion. Most agree with Securus’s argument that the language in paragraph 268 of the *2015 ICS Order* demonstrates the Commission’s intent that ICS providers should not have to file their first annual reports until April 1 of the calendar year following publication of OMB approval.¹⁴ Some ICS providers also argue that an extension beyond June 1, 2017, is warranted in light of the complexities involved in compliance and the pending judicial review of the underlying order and of the reporting rule.¹⁵

6. The ICS Advocates oppose the Motion for Extension, arguing that the example provided in paragraph 268 of the *2015 ICS Order* is merely dicta and noting that nothing in the Commission’s rules compels a finding that the filing deadlines should be postponed until 2018.¹⁶ The ICS Advocates also point out that the Bureau has already given ICS providers an extension until June 1, 2017, to comply with the initial reporting requirement.¹⁷ Finally, the ICS Advocates question whether the annual reporting requirements are as burdensome as the ICS providers claim, particularly in light of reports and other documents that providers must already prepare in connection with their ICS contracts.¹⁸ The Human

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2017. . . . Subsequent reports and certifications will be due to the Commission by April 1 of each year.” (footnote omitted)).

⁸ Motion for Extension at 6.

⁹ *2015 ICS Order*, 30 FCC Rcd at 12892, para. 268.

¹⁰ Motion for Extension at 3.

¹¹ *Global Tel*Link v. Fed. Commc’ns Comm’n*, No. 15-1461 (D.C. Cir., Mar. 7, 2016).

¹² Motion for Extension at 4.

¹³ *Id.* at 6.

¹⁴ See *Global Tel*Link* Mar. 28, 2017 Comments at 2; *Pay Tel* Mar. 28, 2017 Comments at 1-2; *CenturyLink* Apr 4, 2017 Reply Comments at 1-2.

¹⁵ See *ICSolutions* Mar. 27, 2017 Comments at 1-2; *CenturyLink* Reply Comments at 4.

¹⁶ See *Wright* Petitioners, *Citizens United for Rehabilitation of Entrants*, and *Prison Policy Initiative* (collectively, the ICS Advocates) March 28, 2017 Comments at 3.

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 2, Ex. 1.

Rights Defense Center also opposes the motion, citing the need for transparency regarding ICS rates and fees.¹⁹

7. Upon review, we are not persuaded that the *2015 ICS Order* requires that the first reporting deadline be postponed until April 1, 2018. The *Order* states that “the first annual report will be due after the Commission publishes [OMB] approval” and that the report “shall be submitted to the Commission by April 1st of each year.”²⁰ Given that notice of OMB approval was published in March 2017, the plain language of the Commission’s order and rule would have required providers to comply with the reporting requirements by April 1, 2017.

8. We conclude that the example the Commission provided in paragraph 268 of the *2015 ICS Order* was based on an expectation that OMB approval would, if granted in 2016 at all, be granted in late 2016 and was specifically meant to put providers on notice that had OMB approval been granted and published by the end of 2016, the Commission expected that providers would be ready to report on their 2016 data by the April 1, 2017 deadline. This view of the language in the Commission’s order is consistent with the typical timeframe for obtaining OMB approval of reporting requirements and with the fact that the Commission’s order was not released until late in 2015.

9. If the Commission had intended to set the first reporting deadline to be on April 1 in the year following OMB approval, as the ICS providers claim, it could have done so explicitly in either the ordering clauses of the *2015 ICS Order* or in the language of the reporting rule.²¹ We do not read the example that the Commission provided in paragraph 268 of the order as contradicting the plain meaning of the ordering clauses or the language of the rule itself. Moreover, the example describes only one particular scenario, in which notice of OMB approval is published in 2016; it did not—and was not intended to—override the language in the rule the Commission adopted in the same order.

10. Although we disagree with arguments favoring an extension of the reporting deadline until April 1, 2018, we nonetheless agree, in part, with Securus and other commenters that an additional extension is warranted. In reaching this conclusion, we are cognizant of the fact that “[i]t is the policy of the Commission that extensions of time shall not be routinely granted.”²² Accordingly, we find that Securus has demonstrated good cause for a limited further extension to July 1, 2017, and that such an extension is sufficient to facilitate ICS providers’ ability to file complete and accurate reports and to ease the burden of providing such reports, without causing undue delay to the Commission’s consideration of these issues.²³ We also note that this extension ensures that providers have as much time to file their reports as they would have had if OMB approval had been obtained and published in late 2016.²⁴ Finally,

¹⁹ See Human Rights Defense Center Mar. 28, 2017 Comments.

²⁰ *2015 ICS Order*, 30 FCC Rcd at 12892, para. 268.

²¹ Cf. Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling, 23 FCC Rcd 5992, 6010 ¶ 39 (2008) (“[I]n cases where the text of the rules is inconsistent with the text of an Order, the text of the rule controls.”).

²² 47 CFR § 1.46.

²³ See Motion for Extension at 5-6 (describing compliance with the reporting requirements as an enormous task “given the amount of data that Rule 64.6060 demands and the present lack of finality in the underlying ICS rules”). But see ICS Advocates Comments at 3 (arguing that Securus has failed to demonstrate that it is unable to compile the required information by June 1, 2017).

²⁴ Cf. ICS Advocates Apr. 4, 2017 Reply Comments at 2-3 (arguing that the time between OMB approval and the June 1, 2017 deadline represents a longer period of time than the providers would have had if the notice of OMB approval had been published in December 2016).

while we acknowledge that Pay Tel's comments included an appendix requesting clarification of some of the instructions to the reporting requirements,²⁵ we find that we do not need to address those issues in this Order.²⁶

11. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r); and sections 0.91, 0.291, 1.3, and 1.46 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and 1.46 that the Motion for Extension of time to submit annual reports regarding Inmate Calling Services filed on March 10, 2017, by Securus Technologies, Inc., IS GRANTED IN PART to the extent described herein and IS OTHERWISE DENIED, and the deadline for all parties to comply with these annual reporting requirements IS July 1, 2017.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief
Wireline Competition Bureau

²⁵ Pay Tel Comments at Ex. A.

²⁶ See ICS Advocates Reply Comments at 2-4 (explaining that Pay Tel should have requested clarifications during the PRA process and arguing that the requested clarifications should not be permitted to cause a delay now). We agree with the ICS Advocates that Pay Tel had opportunities to raise these questions during the PRA process. To the extent warranted, the Bureau may address these questions in an appropriate manner. See ICS Advocates Reply Comments at 3-4 (explaining that Pay Tel's request for clarifications can be addressed in a public notice or by contacting the Commission's staff directly).