



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 23-355

Released: April 28, 2023

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

Comment Date: 30 days after date of publication in the Federal Register

Reply Comment Date: 45 days after date of publication in the Federal Register

I. INTRODUCTION AND BACKGROUND

By this Public Notice, the Wireline Competition Bureau (WCB or Bureau) and the Office of Economics and Analytics (OEA) (collectively, WCB/OEA) seek comment on the contours and specific requirements of the proposed 2023 Mandatory Data Collection for incarcerated people's communications services (IPCS). In issuing this Public Notice, we act pursuant to the Commission's directive so that it is able to implement the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act).¹

On January 5, 2023, President Biden signed into law the Martha Wright-Reed Act, 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."² 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.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 and not later than 24 months after the Act's January 5, 2023 enactment date.⁴ 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."⁵ It also allows the Commission to

¹ *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, para. 84 (2023) (*2023 IPCS Notice* or *2023 IPCS Order*); see 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 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d).

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

³ *Id.* § 2(c).

⁴ *Id.* §§ 2, 3(a); 47 U.S.C. § 276(b)(1)(A).

⁵ Martha Wright-Reed Act § 3(b)(2).

“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.⁶

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 financial burdens imposed on incarcerated people and their loved ones, while ensuring that providers are fairly compensated for their services.⁷ In requiring or allowing the Commission to consider certain types of costs, the new Act contemplates that the Commission would undertake an additional data collection. To ensure that it has the data it needs to meet its substantive and procedural responsibilities under the Act, the Commission delegated authority to WCB/OEA to “update and restructure” the Commission’s most recent data collection “as appropriate in light of the requirements of the new statute.”⁸ 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 ratemaking authority, including, but not limited to, requesting “more recent data for additional years not covered by the [Third Mandatory Data Collection].”⁹

In seeking comment on our proposals for the proposed 2023 Mandatory Data Collection, we do not seek additional comment on the questions and other issues previously raised in the *2023 IPCS Notice* or in relevant prior Commission or Bureau notices.¹⁰ Such comment is more appropriately submitted during the comment period specifically established for the *2023 IPCS Notice*.¹¹ Thus, comments in response to this Public Notice need not include advocacy regarding issues raised in that *2023 IPCS Notice*, including how the Commission should interpret the language of the Martha Wright-Reed Act to ensure that it implements the statute in a manner that fulfills Congress’s intent, the extent to which particular types of safety and security measures are necessary to provide IPCS, or the appropriate treatment of site commissions.

⁶ *Id.* § 3(b)(1).

⁷ The Commission previously sought data related to audio services provided to incarcerated persons, now included in IPCS, on three occasions. *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (2013); *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); *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 Order*).

⁸ *2023 IPCS Notice* at 2, para. 2; *2023 IPCS Order* at 33, para. 84. The Commission’s most recent data collection is referred to as the Third Mandatory Data Collection. *Rates for Interstate Inmate Calling Services*, Order, DA 22-52, at 1, para. 1 (WCB Jan. 18, 2022) (*Third MDC Order*).

⁹ *2023 IPCS Order* at 33, para. 84; *id.* at 33-34, para. 85. The Commission directed WCB/OEA to modify the template and instructions of the most recent data collection to the extent appropriate to timely collect such information to cover the additional services and providers now subject to the Commission’s authority. *Id.* at 33-34, para. 85.

¹⁰ As explained in the *2021 ICS Order*, the purpose of a data collection is to provide the Commission with sufficient information to resolve various issues it is considering as part of a rulemaking. *2021 ICS Order*, 36 FCC Rcd at 9618-19, paras. 218, 221.

¹¹ See *Comment Dates Set for Notice Implementing the Martha Wright-Reed Act to Ensure Just and Reasonable Rates and Charges for Incarcerated People’s Communications Services*, WC Docket Nos. 23-62, 12-375, Public Notice, DA 23-306 (WCB Apr. 10, 2023) (announcing that comments and reply comments in response to the *2023 IPCS Notice* are due no later than May 8, 2023, and June 6, 2023, respectively); see also *Third MDC Order* at 4, para. 8 (explaining that a data collection is “not the proper administrative vehicle to . . . change Commission rules”).

II. OVERALL STRUCTURE OF THE DATA COLLECTION

A. Overall Approach

Pursuant to our delegated authority, we propose updated instructions, templates, and a certification form for the proposed 2023 Mandatory Data Collection, referenced in Appendix A.¹² We seek comment on all aspects of these proposed documents. Do they seek all the information the Commission will need to establish a compensation plan ensuring that IPCS rates and charges are just and reasonable and that IPCS providers are fairly compensated, consistent with the Martha Wright-Reed Act?¹³ If not, what steps should we take to improve the proposed documents? The Commission's prior data collections have demonstrated that detailed and specific instructions and templates are essential to ensure that providers use comparable procedures to determine and report their costs, revenues, demand units, and other data.¹⁴ We invite comment on whether the proposed instructions and templates are sufficiently detailed to accomplish this objective. If not, what additional instructions, inquiries, or fields should we add? Conversely, are there any instructions, inquiries, or fields that could be removed because they are unnecessary?

We propose to retain the overall structure of the Third Mandatory Data Collection, while revising and supplementing the definitions, instructions, and templates to accommodate the Commission's expanded authority. To a large extent, the specific information we propose to collect, and the related instructions (including those relating to cost allocation), parallel the information collected by, and the instructions for, the Third Mandatory Data Collection. We invite comment on this approach. We ask that any commenter supporting an alternative approach, either with regard to the data collection as a whole or a particular aspect, explain in detail how that alternative approach would enable the Commission to discharge its responsibilities under the Martha Wright-Reed Act and the Communications Act.

Reporting Period. In the Third Mandatory Data Collection, we required providers to submit data and other information for calendar years 2019, 2020 and 2021.¹⁵ We propose to generally limit the forthcoming data collection to calendar year 2022 data. We invite comment on this proposal. Does it properly balance the need for information, including cost data, on the video and intrastate services that were not previously subject to the Commission's ratemaking authority against the additional burdens providers would encounter in developing that information for years prior to 2022? Should we instead require providers to incorporate information on their video and intrastate IPCS operations into their data collection responses for 2020 and 2021, and to report that information in addition to information for 2022?

Cost Categories. The Martha Wright-Reed Act expands the Commission's authority under section 276(b)(1)(A) of the Communications Act to include "advanced communications services," as defined in sections 3(1)(A), (B), (D), and new (E) of the Communications Act.¹⁶ Those provisions of section 3(1), in turn, define "advanced communications services" as including (1) "interconnected VoIP [Voice over Internet Protocol] service," (2) "non-interconnected VoIP service," (3) "interoperable video conferencing service," and (4) "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,

¹² The draft instructions and template are posted on the Commission's website. See Appx. A. The template consists of a Word document and Excel spreadsheets. For simplicity, we refer to these respective portions of the template as the Word template and the Excel template.

¹³ See *2023 IPCS Order* at 32-34, paras. 83-86.

¹⁴ See, e.g., *2021 ICS Order*, 36 FCC Rcd at 9621, para. 224 (highlighting one commenter's view that "many of the issues with the current dataset [i.e., the dataset from the Second Mandatory Data Collection] appear to have arisen due to differing provider interpretations of instructions and terms, and that the Commission should minimize the potential for such differing interpretations as much as possible").

¹⁵ *Third MDC Order* at 13, para. 36.

¹⁶ 47 U.S.C. §§ 153(1)(A)-(B), (D)-(E), 276(b)(1)(A).

regardless of technology used.”¹⁷ It also extends the Commission’s ratemaking authority to intrastate as well as interstate and international IPCS.¹⁸

We propose 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, on both a company-wide and a facility-specific basis for 2022.¹⁹ We invite comment on this proposal. Should we specify any additional categories for providers to use? Alternatively, would a more limited group of cost categories still allow the Commission to discharge its ratemaking responsibilities?

Are separate cost data for audio IPCS and video IPCS services necessary, or sufficient, for the Commission to ensure just and reasonable rates for those services? If not, what alternative approach should we use? What are the challenges of allocating IPCS costs between audio and video services? Do IPCS providers maintain sufficient records to directly assign or directly attribute significant percentages of their costs to audio IPCS and video IPCS?²⁰ If not, how should providers allocate their IPCS costs between these two categories of services?

Our proposed instructions and templates would not require providers to subdivide their audio IPCS costs or their video IPCS costs into more discrete categories. We seek comment on this approach. What different types of audio and video services do IPCS providers offer to incarcerated people? Do the costs of providing audio IPCS vary depending on whether it is a traditional voice service, an interconnected VoIP service, a non-interconnected VoIP service, or another type of audio service used by incarcerated people to communicate with the non-incarcerated? For example, do providers pay intercarrier compensation charges for some types of IPCS but not for others? Do non-interconnected voice services have their own unique costs? Are the net cost differences among types of video IPCS sufficiently significant and measurable in a meaningful way to justify the additional burden of separate reporting? If separate reporting is justified, how should we revise the proposed instructions and templates to capture those cost differences? Similarly, do the costs of providing video IPCS vary depending on the nature of the video service? To the extent there are such variations, how should we revise the instructions and templates to capture them?

Intrastate and International IPCS. In the Third Mandatory Data Collection, we required providers to report costs of providing inmate calling services on a total company basis, without separating them into interstate/international and intrastate components.²¹ Although companies had the option to allocate their total company costs between interstate/international and intrastate inmate calling services,²² no provider exercised this option. Accordingly, we propose to follow our previous approach and require companies to report costs for IPCS without separation between these jurisdictions and provide an option for separate reporting for companies that elect to do so. We seek comment on this proposal. Do the costs of either audio IPCS or video IPCS vary significantly depending on whether they are interstate, intrastate,

¹⁷ 47 U.S.C. §§ 153(1)(A)-(B), (D)-(E), 276(d). The Communications Act’s definitions of “interconnected VoIP service,” “interoperable video conferencing service,” and “non-interconnected VoIP service” are set forth in 47 U.S.C. § 153(25), (27), and (36), respectively.

¹⁸ Martha Wright-Reed Act § 2(c).

¹⁹ See Appx. A, Incarcerated People’s Communications Services 2023 Mandatory Data Collection, Proposed Instructions, §§ IV.C.2.a-b, IV.D.1.a-b, (2023). The types of ancillary services are automated payment services, live agent service, paper bill/statement service, single-call and related services, third-party financial transaction services, and other ancillary services. *Id.*

²⁰ *Id.* §§ IV.C.2.a-b, IV.D.1.a-b.

²¹ Calling Services for Incarcerated People Third Mandatory Data Collection Instructions, § IV.C.2.a, http://www.fcc.gov/sites/default/files/2022_mdc_-_instructions_to_third_mandatory_data_collection_1.18.2022.docx (last visited Apr. 26, 2023) (link provided in *Third MDC Order* at Appx. A, Third Mandatory Data Collection Instructions and Template).

²² *Id.* § IV.C.2.

or international? If so, how should we revise the proposed instructions and templates to capture those differences?²³ The proposed instructions also require providers to separately report expenses related to routing and completing communications to international destinations as operating expenses. Will the proposed instructions yield accurate and usable data sufficient for the Commission to evaluate these expenses? Why or why not? Are there changes we should consider to the proposed instructions in this regard? If so, what are they?

Costs of Providers' Safety and Security Measures. The Martha Wright-Reed Act specifies 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.²⁴ To facilitate the Commission’s consideration of such costs, we propose to require providers to report the costs they incurred to provide safety and security measures during 2022, both in the aggregate and in specific categories. Determining those costs would involve several steps.

First, the proposed instructions would require providers to allocate a portion of their total-company investments and expenses to a company-wide “safety and security measures” category and to exclude those investments and expenses from all other cost categories. This allocation would be done in accordance with the detailed cost allocation hierarchy set forth in the instructions. The “safety and security measures” category thus would encompass all safety and security services and products that the companies provide, regardless of whether they are provided in connection with audio, video, or nonregulated services, or in connection with traditional telephone or advanced communications services. Do commenters agree with this approach? Instead, should providers be required to report their costs of safety and security measures separately for different categories of services? Why or why not? If safety and security costs are not treated as a separate service or as multiple separate services, then how should the Commission organize the data collection to be able to consider the costs of necessary safety and security measures?

Second, the proposed instructions would require each provider to allocate their annual total expenses incurred in providing safety and security measures among seven company-level categories using the provider’s best estimate of the percentage of those expenses attributable to each category.²⁵ We seek comment on the benefits and burdens of this approach. We invite comment on the categories of safety and security measures in the proposed instructions. How, if at all, should they be changed? Are there other examples of specific safety and security measures that should be included in the illustrative lists included in each of the categories? If so, what are these measures and how should they be categorized? Are there other categories of safety and security measures that should be included? If so, which ones? Alternatively, are there categories that should be removed? If so, which ones should be removed and why? Do commenters agree with the proposed approach of requiring providers to allocate annual total expenses on an estimated percentage basis or should we instead require providers to perform a detailed allocation of actual investments and expenses among the seven categories? To the extent commenters argue that a more detailed cost allocation would be more appropriate, commenters should explain and justify in detail the cost allocation method they propose and the benefits and burdens of their approach.

²³ In the Third Mandatory Data Collection, we required inmate calling services providers to report their payments to carriers for terminating international communications as an operating expense without jurisdictional separation on both a total-company and a facility-by-facility basis. *Id.* §§ IV.C.2.b.3.c, D.1.b.3.c. The proposed instructions and Excel template would continue this approach.

²⁴ Martha Wright-Reed Act § 3(b)(2).

²⁵ Annual total expenses is the sum of annual operating expenses and annual capital expenses. The seven categories are: expenses related to the Communications Assistance for Law Enforcement Act, law enforcement support services, communication security services, communication recording services, communication monitoring services, voice biometrics services, and other safety and security measures.

Third, after reporting the best estimate of the percentage of the company's annual total expenses of providing safety and security measures for each category, the proposed instructions would direct providers to report for each of those same categories the company's best estimate of the percentage of safety and security expenses attributable to audio IPCS, video IPCS, ancillary services, and other services and products. Would this approach provide reasonably accurate data on the portions of each category of providers' safety and security costs that are attributable to audio IPCS, video IPCS, ancillary services, and other services and products? Why or why not? If not, is there another allocation method we should consider? If so, what do commenters propose and why would it be preferable to the allocation set forth in the proposed instructions?

Providers would also report facility-level safety and security costs for each facility. The proposed instructions would require providers to first identify whether they provide safety and security measures at each facility they serve. Providers would do so by indicating "Yes" or "No" in the appropriate cell on the Excel template for each of the seven identified categories of safety and security measures at each facility. Wherever providers offer a given safety and security measure, the proposed instructions would then require the provider to allocate its company-wide safety and security annual total expenses for that category among the individual facilities at which that service is offered. Providers would then further allocate those amounts at each facility between audio IPCS, video IPCS, ancillary services, and other services and products. We seek comment on this approach. Would it accurately capture the costs of providing the seven identified categories of safety and security measures at each facility? Why or why not? If not, how could we change the facility-level reporting to identify the safety and security measures providers offer at the facilities they serve and the cost of providing those measures? Will the subsequent allocation between audio IPCS, video IPCS, ancillary services, and other services and products be sufficiently accurate to capture the costs of providing those safety and security measures in connection with these other services? Why or why not? Are there other methods we should consider that would allow the Commission to evaluate the costs of safety and security measures offered in connection with audio IPCS, video IPCS, ancillary services and other services and products, to the extent cost differences exist? If so, what do commenters propose and why?

Costs of Facilities' Safety and Security Measures. In the *2023 IPCS Notice*, the Commission sought comment on how it could determine the costs associated with necessary safety and security measures "to the extent resources of the facilities are used to provide these measures."²⁶ Consistent with that request, we propose to require providers to report any verifiable, reliable, and accurate 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.²⁷ To the extent providers have such information for any specific facility, the instructions would direct providers to report the annual total expenses facilities incur using the same seven categories proposed in connection with reporting provider-incurred safety and security costs. We seek comment on the benefits and burdens of this approach. Is there a better approach the Commission could use to obtain the costs facilities incur in providing safety and security measures? The proposed instructions require providers to be able to reproduce, on request, documentation sufficient to explain and justify the accuracy and reliability of any data they report regarding the expenses incurred by facilities for safety and security measures. Do commenters agree with this approach? Will it enable the Commission to evaluate the reliability and accuracy of any data receives? If not, how should providers be required to demonstrate the accuracy and reliability of the data they provide regarding the costs facilities incur to provide safety and security measures? To the extent providers are not able to establish the

²⁶ *2023 IPCS Notice* at 24, para. 56.

²⁷ To assist the Commission in obtaining the broadest possible view of the costs that facilities incur, the proposed instructions also ask providers to indicate whether they have any verifiable, reliable, and accurate information on other facility-incurred costs that are not safety and security costs. To the extent providers have such information, the proposed instructions require that providers be able to reproduce, on request, documentation sufficient to fully explain and justify the accuracy and reliability of any data they report regarding the expenses incurred by facilities that are not safety and security costs.

accuracy and reliability of the data they rely on, how should the Commission accurately account for these expenses?

B. Specific Instructions

We seek comment on the proposed instructions and whether they provide sufficient guidance to ensure that providers use uniform methodologies and report the required information in a consistent manner. Are there any changes that would clarify the proposed instructions or increase uniformity across providers' responses, particularly regarding how to report and allocate their costs? If so, what specific changes should we make? Is there alternative or additional language that would minimize ambiguity in any instruction? Commenters should explain the potential benefits and burdens of alternative or additional language they propose.

The proposed instructions also address many data requests that are not specifically described below. We seek comment on all aspects of the proposed instructions, including on requests that we do not specifically seek comment on in this Public Notice.

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?²⁸ 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 assist filers in furnishing the Commission with the relevant data? If so, what are they and how should they be defined? Should any proposed definitions be removed?

Required Information. The proposed instructions would provide guidance for the collection of a variety of data on audio IPCS, video IPCS, safety and security measures, various types of ancillary services, and other services and products. We seek detailed comment on whether we should collect additional data or, conversely, reduce the data providers are required to submit. Commenters urging that we should request different data should explain how their proposals would affect the Commission's ability to meet its responsibilities under the Martha Wright-Reed Act and the Communications Act. Would the benefits of requesting different data justify the costs? Why or why not?

Response Granularity. We propose that all providers submit data both at the company-wide level and for each correctional facility in which the provider offered IPCS during 2022.²⁹ We seek comment on this approach. We propose this method to fully account in a coherent way for the shared costs providers incur as some of the assets or labor they use to provide IPCS are also used to provide other services, and are used to provide IPCS to multiple facilities. If parties believe that a different level of granularity is appropriate, please explain. Assuming we should require providers to report data on a facility-level basis, how should we require providers that do not track costs on a facility level to respond? Are the cost allocation procedures set forth in the proposed instructions sufficient to enable these providers to allocate costs down to the facility and, if not, what additional procedures should we require? Are there any additional data we should seek that would help ensure that providers allocate costs to facilities in a manner that more accurately reflects how such costs are incurred?

Cost Allocation. We propose several steps for providers to follow in allocating their costs among various services, as set forth in the proposed instructions. What refinements, if any, should we make to our proposed cost allocation methodology? Is there an alternative methodology that would better ensure that providers allocate their costs in a manner consistent with how they are incurred? If so, what is that methodology and why would it produce more accurate results than the proposed method? Would the benefits of an alternative methodology justify the costs?

Financial Information. The proposed instructions retain the requirements that providers report financial data in accordance with generally accepted accounting principles (GAAP) and asset values that

²⁸ See, e.g., 2021 ICS Order, 36 FCC Rcd at 9621, para. 224.

²⁹ See, e.g., *id.* at 9620-21, para. 223.

reflect the results of recent impairment testing.³⁰ Is this the correct approach? If not, why not? Are other or additional instructions needed to ensure that the carrying value of any provider's assets is not misstated?³¹ If so, what other instructions should we adopt?

Site Commissions. The proposed instructions retain in large part the questions concerning company-wide and facility-level site commission data from the Third Mandatory Data Collection. Are there specific changes we should consider, either to the overall structure or level of disaggregation for site commission data? If so, what changes do commenters suggest and why? As explained in the attached proposed instructions, we propose new narrative questions in a separate Word template designed to obtain information about interstate, intrastate, and international site commissions, including whether and how the formulas providers use to calculate monetary site commissions differ among interstate, intrastate, and international communications. We also propose a new Word template question seeking information about whether providers pay site commissions separately on audio and video services and how those site commissions are calculated. We invite comment on these proposed questions and ask commenters to suggest alternative questions that would help the Commission obtain reliable and accurate data and information on site commission payments for interstate, intrastate, and international, as well as for audio and video communications.

Ancillary Services. While the proposed instructions retain essentially the same company-wide and facility-level questions about ancillary services that we asked as part of the Third Mandatory Data Collection, we invite comment on potential changes that we should consider. Do commenters suggest that we add or remove questions in these sections? If so, what should be added or removed? Is there a better structure or approach that would yield more accurate, reliable, or useful data? If so, what do commenters propose? Given the Commission's expanded authority under the Martha Wright-Reed Act, we propose new Word template questions that would seek information on how providers assess ancillary service charges on interstate, intrastate, and international communications, in light of the Commission's previous conclusion that "ancillary service charges generally cannot be practically segregated between the interstate and intrastate jurisdiction."³² We also propose to add Word template questions regarding the ancillary service charges or other charges assessed in connection with video services and whether there are any differences between the types of ancillary service charges assessed in connection with video and audio IPCS. We invite comment on these questions. Are there other questions we should ask that would assist the Commission in evaluating any differences based on either the jurisdiction of the communications service or whether the charges are being assessed in connection with an audio or video service? Are providers currently assessing any other charges in connection with video communications that fall outside of the five ancillary service charges permitted under the Commission's rules?³³ If so, what are they and how should they be addressed in the data collection? Are there particular questions we should ask to help the Commission understand how providers assess ancillary service charges in circumstances where service offerings might be mixed between audio and video services?

³⁰ Under GAAP, an asset or asset group is impaired when its carrying amount, that is, the value reflected on the balance sheet, net of depreciation or amortization, exceeds its fair market value. In that case, the value of the impaired asset or asset group is written down and the reduced value is reflected on the balance sheet and a loss is recorded on the income statement. *Wireline Competition Bureau and Office of Economics and Analytics Seek Comment on Upcoming Third Mandatory Data Collection for Inmate Calling Services*, WC Docket No. 12-375, Public Notice, 36 FCC Rcd 13859, 13861 (WCB/OEA 2021).

³¹ See *2021 ICS Order*, 36 FCC Rcd at 9551-32, para. 77 (explaining how Global Tel*Link Inc. (GTL) argued that it could not respond to a WCB request for additional cost, revenue, and cost allocation information because it "does not maintain records that would allow it to respond," leading the Commission to adjust GTL's reported data in setting interim provider-related rate caps); *id.* at 9555-56, para. 86.

³² *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, 8495, para. 28 (2020).

³³ 47 CFR § 64.6020.

C. Reporting Template

We propose to require providers to submit the requisite data using a reporting template, to be filed through the Commission's Electronic Comment Filing System (ECFS).³⁴ The proposed template consists of a Word document (Appendix A to the instructions) for responses requiring narrative information and Excel spreadsheets (Appendix B to the instructions) for responses that require numeric or other information. We seek comment on proposed modifications in the template seeking data relevant to the Commission's expanded jurisdiction, including modifications to collect data on video IPCS and safety and security measures. We also seek suggestions for improvements we can make to the template. Is there an alternative organization that would reduce any perceived burdens, without compromising the reliability and accuracy of the data we are able to collect? Are there other organizational or substantive improvements we can make to the reporting template? Do any questions require clarification?

D. Timeframe for Provider Responses to the Data Collection

We invite comment on the timeframe for provider responses to the data collection. In the *2023 IPCS Order*, the Commission explained that “[a]ny new or modified requirements that require approval from the Office of Management and Budget (OMB) under the Paperwork Reduction Act shall be effective on the date specified in a notice published in the Federal Register announcing OMB’s approval.”³⁵ Importantly, the Martha Wright-Reed Act imposes a statutory requirement that the Commission “promulgate any regulations necessary to implement” the Act, not earlier than 18 months and not later than 24 months after the Act’s January 5, 2023 enactment date.³⁶ As the Commission explained in the *2023 IPCS Order*, “[a]ny unnecessary delay in our efforts to collect appropriate information would be inconsistent with, and undermine the Commission’s ability to meet the deadlines contained in, the Act.”³⁷ Given these constraints, we propose to require providers to file their responses to the data collection within 90 days of the release of our order approving the data collection. Do commenters agree with this timeframe? Would it afford providers sufficient time to prepare and submit their responses while also allowing the Commission to act expeditiously to implement the Martha Wright-Reed Act within the statutory timeframe? Why or why not? Should we instead consider a shorter, or longer, timeframe for providers to respond to the data collection? If so, what timeframe do commenters propose and why?

E. Digital Equity and Inclusion

As part of the Commission’s continuing effort to advance communications equity for all,³⁸ including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, we invite comment on any equity-related considerations³⁹

³⁴ See, e.g., Inmate Calling Services Mandatory Data Collection, WC Docket No. 12-375, General Instructions, at 2, https://apps.fcc.gov/edocs_public/attachmatch/DOC-343708A3.docx (last visited Apr. 28, 2023) (requiring responses to the Second Mandatory Data Collection to be made using ECFS).

³⁵ *2023 IPCS Order* at 34, para. 85.

³⁶ Martha Wright-Reed Act § 3(a).

³⁷ *2023 IPCS Order* at 35, para. 87.

³⁸ Section 1 of the Communications Act provides that the Commission “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.

³⁹ We define the term “equity” 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).

and benefits that may be associated with the upcoming data collection. Specifically, we seek comment on how our proposals for that collection may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

III. 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 ECFS. See FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).⁴⁰

- 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-19.⁴¹

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.

Ex Parte Presentations. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁴² 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).

⁴⁰ The Protective Order previously 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 Inmate Calling Services*, WC Docket No. 12-375, Order, 35 FCC Rcd 9267 (WCB 2020) (clarifying non-confidential treatment for certain information).

⁴¹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

⁴² 47 CFR § 1.1200 *et seq.*

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.⁴³ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Supplemental Initial Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act,⁴⁴ 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 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.⁴⁵ In addition, summaries of this Public Notice and the Supplemental IRFA will be published in the Federal Register.⁴⁶

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.⁴⁷ 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.

Additional Information. For further information, please contact Ahuva Battams, Wireline Competition Bureau, Pricing Policy Division, at (202) 418-1565 or ahuva.battams@fcc.gov. Please copy mandatorydatacollection@fcc.gov on any email correspondence.

-FCC-

⁴³ 47 CFR § 1.1206(b).

⁴⁴ *See* 5 U.S.C. § 603.

⁴⁵ *See id.* § 603(a).

⁴⁶ *Id.*

⁴⁷ Contemporaneously with the publication of this Public Notice in the Federal Register, we will publish a notice in the Federal Register seeking comment pursuant to the PRA on the information collection requirements for the proposed 2023 Mandatory Data Collection in the 2023 *IPCS Notice* and this Public Notice. We will consider comments submitted in response to both Federal Register notices in finalizing this information collection for submission to OMB.

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

The instructions, template, and certification form for the proposed 2023 Mandatory Data Collection are available through this link: <https://docs.fcc.gov/public/attachments/DOC-393014A1.docx>.

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 Office of Economics and Analytics (OEA) (collectively, WCB/OEA) 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 this Public Notice to supplement the Commission's Regulatory Flexibility Analyses completed 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.² 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 this Public Notice. The Commission will send a copy of the Public Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).³ In addition, the Public Notice and the Supplemental IRFA (or summaries thereof) will be published in the Federal Register.⁴ This present Supplemental IRFA conforms to the RFA.⁵

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

2. In this Public Notice, WCB/OEA seek comment on the contours and specific requirements of the proposed 2023 Mandatory Data Collection for incarcerated people's communications services (IPCS). In issuing this Public Notice, we act pursuant to the Commission's directive so that it will be able to implement the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act).⁶ 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).⁷ Likewise, it directed WCB/OEA "to update and restructure the most recent data collection as appropriate to implement the Martha Wright-Reed Act."⁸

3. On January 5, 2023, President Biden signed into law the Martha Wright-Reed Act, 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."⁹ The new Act also amends section 2(b) of the Communications Act, to

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

³ See 5 U.S.C. § 603(a).

⁴ *Id.*

⁵ See *id.* § 604.

⁶ *2023 IPCS Order* at 33, para. 84 (Mar. 17, 2023); see 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); 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d).

⁷ *2023 IPCS Order* at 33, para. 83.

⁸ *Id.* at 32, para. 82 (citing the Martha Wright-Reed Act §§ 2-3).

⁹ Martha Wright-Reed Act § 2(a)(2), (b).

make clear that the Commission’s authority extends to intrastate as well as interstate and international communications services used by incarcerated people.¹⁰

4. 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 and not later than 24 months after the Act’s January 5, 2023 enactment.¹¹ The Act requires the Commission to consider, as part of its implementation, the costs of “necessary” safety and security measures, as well “differences in costs” based on facility size, or “other characteristics.”¹² 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.¹³

5. Pursuant to their delegated authority, WCB/OEA have drafted instructions, a template, and a certification form for the proposed 2023 Mandatory Data Collection¹⁴ and are issuing this Public Notice to seek comment on all aspects of these proposed documents.

B. Legal Basis

6. The proposed action is 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, 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

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed 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.”¹⁵ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.¹⁶ 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.¹⁷

8. As noted above, an IRFA was incorporated in the *2023 IPCS Notice*.¹⁸ In that analysis, the Commission described in detail the small entities that might be affected. Accordingly, in this Public

¹⁰ *Id.* § 2(c).

¹¹ *Id.* § 3(a); 47 U.S.C. § 276(b)(1)(A).

¹² Martha Wright-Reed Act § 3(b)(2).

¹³ *Id.* § 3(b)(1).

¹⁴ *See* Appx. A, *supra*.

¹⁵ *See* 5 U.S.C. § 601(6).

¹⁶ *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.”

¹⁷ *See* 15 U.S.C. § 632.

¹⁸ *2023 IPCS Notice* at 38, Appx. A (Initial Regulatory Flexibility Analysis).

Notice, for the Supplemental IRFA, we hereby incorporate by reference the descriptions and estimates of the number of small entities from the *2023 IPCS Notice's* IRFA.¹⁹

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

9. The Public Notice seeks comment on the specifics of the proposed 2023 Mandatory Data Collection to ensure that the Commission receives the data it needs to meet its substantive and procedural responsibilities under the Act. The proposed 2023 Mandatory Data Collection would require IPCS providers to submit, among other things, data and other information on calls, demand, operations, company and contract information, information about facilities served, revenues, site commission payments, the costs of safety and security measures, video IPCS, and ancillary fees. The proposed 2023 Mandatory Data Collection may require entities, including small entities and IPCS providers of all sizes, currently subject to our inmate calling services rules to be subject to modified or new reporting or other compliance obligations. This may also be the case for providers newly subject to the Commission's expanded regulatory authority, such as providers offering only intrastate or certain advanced communications. 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. In assessing the cost of compliance for small entities and for providers of incarcerated people's communications services of all sizes, at this time WCB/OEA are not in a position to determine whether the proposed 2023 Mandatory Data Collection will impose any significant costs for compliance in general. We anticipate the information we receive in comments, including any cost and benefit analyses, 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

10. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."²⁰ We will consider all of these factors when we receive substantive comment from the public and potentially affected entities.

11. The proposed 2023 Mandatory Data Collection is a one-time request and does not impose a recurring obligation on providers. Because the Commission's *2023 IPCS Order* requires all IPCS providers to comply with the proposed 2023 Mandatory Data Collection,²¹ the collection will affect smaller as well as larger IPCS providers. WCB/OEA have taken steps to ensure that the data collection template is competitively neutral and not unduly burdensome for any set of providers. For example, the Public Notice proposes to collect data for a single calendar year instead of three calendar years, as in the previous data collection. Additionally, the Public Notice asks whether there are ways of minimizing the burden of the data collection on providers while still ensuring that the Commission collects all the data needed to meet its goals.

12. WCB/OEA will consider the economic impact on small entities, as identified in comments filed in response to the Public Notice and this Supplemental IRFA, in reaching their final

¹⁹ *Id.* at 38, Appx. A, paras. 5-21.

²⁰ 5 U.S.C. § 603(c)(1)-(4).

²¹ *2023 IPCS Order* at 32, para. 82.

conclusions and finalizing the instructions, template, and certification form for the proposed 2023 Mandatory Data Collection.

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

13. None.