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

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

REPORT AND ORDER ON REMAND AND FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Pai and Commissioners Carr, Rosenworcel, and Starks issuing separate statements.

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I. INTRODUCTION

1. The Communications Act divides jurisdiction for regulating communications services, including inmate calling services, between the Commission and the states. Specifically, the Act empowers the Commission to regulate interstate communications services and preserves for the states jurisdiction over intrastate communications services. Because the Commission has not always respected this division, the U.S. Court of Appeals for the District of Columbia Circuit has twice remanded the agency's efforts to address rates and charges for inmate calling services.

2. Today, we respond to the court's remands and take action to comprehensively reform inmate calling services rates and charges. *First*, we address the D.C. Circuit's directive that we consider whether ancillary service charges—separate fees that are not included in the per-minute rates assessed for individual inmate calling services calls—can be segregated into interstate and intrastate components for the purpose of excluding the intrastate components from the reach of our rules. We find that ancillary service charges generally cannot be practically segregated between the interstate and intrastate jurisdictions except in the limited number of cases where, at the time a charge is imposed and the consumer accepts the charge, the call to which the service is ancillary is a clearly intrastate-only call. As a result, inmate calling services providers are generally prohibited from imposing any ancillary service charges other than those permitted by the Commission's rules and providers are generally prohibited from imposing charges in excess of our applicable ancillary service fee caps.

3. *Second*, we propose rate reform of the inmate calling services within our jurisdiction. As a result of the D.C. Circuit's decisions, the interim interstate rate caps of $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls that the Commission adopted in 2013 remain in effect today. Based on extensive analysis of the most recent cost data submitted by inmate calling services providers, we propose to lower our interstate rate caps to $0.14 per minute for debit, prepaid, and collect calls from prisons and $0.16 per minute for debit, prepaid, and collect calls from jails. In so doing, we use a methodology that addresses the flaws underlying the Commission's 2015 and 2016 rate caps and that is consistent with the mandate in section 276 of the Act that inmate calling services providers be fairly compensated for each and every completed interstate call. Additionally, we propose to cap rates for international inmate calling services, which remain uncapped today.

4. We believe that our actions today will ensure that rates and charges for interstate and international inmate calling services are just and reasonable as required by section 201(b) of the Act and thereby enable incarcerated individuals and their loved ones to maintain critical connections. At the same time, given that the vast majority of calls made by incarcerated individuals are intrastate calls, we urge our state partners to take action to address the egregiously high intrastate inmate calling services rates across the country.

II. BACKGROUND

5. Access to affordable communications services is critical for all Americans, including incarcerated members of our society. Studies have long shown that incarcerated individuals who have regular contact with family members are more likely to succeed after release and have lower recidivism rates.[1] Unlike virtually every other American, however, incarcerated people and the individuals they call

[1] *See, e.g.*, *Rates for Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12766-67, para. 3 & n.13 (2015) (*2015 ICS Order or 2015 ICS Further Notice*) (citing research and explaining that "family contact during incarceration reduces recidivism and allows inmates to be more present parents for the 2.7 million children who suffer when an incarcerated parent cannot afford to keep in touch"); Minnesota Department of Corrections, *The Effects of Prisoner Visitation on Offender*

(continued….)

have no choice in their telephone service provider. Instead, their only option is typically an inmate calling services provider chosen by the correctional facility that, once chosen, operates as a monopolist.[2] Absent effective regulation, rates for inmate calling services calls can be unjustly and unreasonably high and thereby impede the ability of incarcerated individuals and their loved ones to maintain vital connections.

6. *Statutory Background.* The Communications Act of 1934, as amended (the Act) establishes a system of regulatory authority that divides power over interstate, intrastate, and international communications services between the Commission and the states.[3] More specifically, section 2(a) of the Act empowers the Commission to regulate "interstate and foreign communication by wire or radio" as provided by the Act.[4] This regulatory authority includes ensuring that "[a]ll charges, practices, classifications, and regulations for and in connection with" interstate or international communications services are "just and reasonable" in accordance with section 201(b) of the Act.[5] Section 201(b) also provides that "[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out" these provisions.[6]

7. Section 2(b) of the Act preserves for the states jurisdiction over "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service."[7] The Commission is thus "'generally forbidden from entering the field of intrastate communication service, which remains the province of the states.'"[8] Stated differently, section 2(b) "erects a presumption against the Commission's assertion of regulatory authority over intrastate communications."[9]

8. Although the Telecommunications Act of 1996 "chang[ed] the FCC's authority with respect to some intrastate activities," "the strictures of [section 2(b)] remain in force."[10] That is,

(Continued from previous page)
Recidivism, at 8-9 (Nov. 2011), https://mn.gov/doc/assets/11-11MNPrisonVisitationStudy_tcm1089-272781.pdf (Minnesota DOC Study) (citing studies finding that incarcerated individuals "who received visits from family and friends were significantly less likely to reoffend or be readmitted to prison"); *id.* at 27 (finding that "more frequent and recent visits were associated with a decreased risk of recidivism"); *see also* Human Rights Defense Center Comments, WC Docket No. 12-375, at 9 (filed July 29, 2015) ("Many filings [i]n this Docket speak to lower recidivism rates and better transitions back into society for prisoners who are able to stay connected with their families and support networks while incarcerated."); Worth Rises, Request for Emergency Action and Relief, WC Docket No. 12-375, at 4 (filed Apr. 7, 2020) (Worth Rises Request) (maintaining that "lack of communication [between incarcerated people and their families] disrupts the real connections needed for successful reentry into society"); Letter from Cheryl A. Leanza, Policy Advisor, United Church of Christ, OC Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2-3 (filed July 29, 2020) (Public Interest Advocates July 29, 2020 *Ex Parte*) (explaining that "family contact has consistently been shown to lower recidivism").

[2] *See GlobalTel*Link v.* FCC, 866 F.3d 397, 404 (D.C. Cir. 2017) (*GTL v. FCC* or *GTL*) (recognizing that "[w]inning ICS providers . . . operate locational monopolies with a captive consumer base of inmates").

[3] *Id.* at 402.

[4] 47 U.S.C. § 152(a).

[5] *Id.* § 201(b).

[6] *Id.*

[7] *Id.* § 152(b).

[8] *GTL v. FCC*, 866 F.3d at 403 (quoting *New England Pub. Commc'ns Council, Inc. v. FCC*, 334 F.3d 69, 75 (D.C. Cir. 2003) (citing 47 U.S.C. § 152(b)).

[9] *GTL v. FCC*, 866 F.3d at 403; *see also id.* ("This is 'not only a substantive jurisdictional limitation on the FCC's power, but also a rule of statutory construction' in interpreting the Act's provisions.") (quoting *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 373 (1986)); *GTL v. FCC*, 866 F.3d at 409.

[10] *GTL v. FCC*, 866 F.3d at 403.

"[i]nosfar as Congress has remained silent . . . , [section 2(b)] continues to function."[11] Thus, while section 276 of the Act specifically directs the Commission to ensure that payphone service providers, including inmate calling services providers, "are fairly compensated for each and every completed intrastate and interstate call using their payphone,"[12] that provision does not authorize the Commission to regulate intrastate rates.[13] Nor does section 276 give the Commission the authority to determine "just and reasonable" rates.[14]

9. *Prior Commission Actions.* The Commission has taken repeated action to address inmate calling services rates and charges. In the *2012 ICS Notice*, the Commission sought comment on whether to establish rate caps for interstate inmate calling services calls.[15] In the *2013 ICS Order*, the Commission established interim interstate rate caps for debit and prepaid calls as well as collect calls and required all inmate calling services providers to submit data (hereinafter, the First Mandatory Data Collection) on their underlying costs so that the agency could develop a permanent rate structure.[16] In the *2014 ICS Notice*, the Commission sought comment on reforming charges for services ancillary to the provision of inmate calling services and on establishing rate caps for both interstate and intrastate inmate calling services calls.[17] In the *2015 ICS Order*, the Commission attempted to adopt a comprehensive framework for interstate and intrastate inmate calling services. More specifically, the Commission adopted limits on ancillary service charges; set rate caps for interstate and intrastate inmate calling services calls; extended the interim interstate rate caps it adopted in 2013 to intrastate calls pending the effectiveness of the new rate caps; and sought comment on whether and how to reform rates for international inmate calling services calls.[18] The Commission also addressed inmate calling services providers' ability to recover mandatory applicable pass-through taxes and regulatory fees.[19] Additionally, the Commission adopted a Second Mandatory Data Collection to enable it to identify trends in the market and adopt further reform, and it required inmate calling services providers to annually report information on their operations, including their current interstate, intrastate, and international rates and their current ancillary service charge amounts.[20] In the *2016 ICS Reconsideration Order*, the Commission increased its rate caps to account for certain correctional facility costs related to the provision of inmate calling services.[21]

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[11] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 381 n.8 (1999).

[12] 47 U.S.C. § 276(b)(1)(A); *see also id.* § 276(d) (defining "payphone service" to include "the provision of inmate telephone service in correctional institutions, and any ancillary services").

[13] *GTL v. FCC*, 866 F.3d at 409-12.

[14] *Id.* at 409.

[15] *See generally Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Notice of Proposed Rulemaking, 27 FCC Rcd 16629 (2012) (*2012 ICS Notice*).

[16] *See Rates for Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14111-12, paras. 5, 7 (2013) (*2013 ICS Order*).

[17] *See generally Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 13170 (2014) (*2014 ICS Notice*).

[18] *See 2015 ICS Order*, 30 FCC Rcd at 12769, 12771, paras. 9, 11; *see also Wireline Competition Bureau Addresses Applicable Rates for Inmate Calling Services and Effective Dates for Provisions of the Inmate Calling Services Second Report and Order*, WC Docket No. 12-375, Public Notice, 31 FCC Rcd 2026, 2026-28 (WCB 2016) (*2016 ICS Public Notice*).

[19] *See 2015 ICS Order*, 30 FCC Rcd at 12859, paras. 190-92.

[20] *See id.* at 12862, 12891-92, paras. 198, 266-67.

[21] *See Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order on Reconsideration, 31 FCC Rcd 9300, 9307, para. 12 (2016) (*2016 ICS Reconsideration Order*).

10. The Commission's attempts to reform inmate calling services rates and charges have a long history in the courts and have not always been well received. In January 2014, in response to inmate calling services providers' petitions for review of the *2013 ICS Order*, the D.C. Circuit stayed the application of certain portions of that *Order* but allowed the Commission's interim rate caps to remain in effect.[22] Later that year, the court held the petitions for review in abeyance while the Commission proceeded to set permanent rates.[23] In March 2016, in response to inmate calling services providers' petitions for review of the *2015 ICS Order*, the D.C. Circuit stayed the application of that *Order*'s rate caps and ancillary service charge cap for single-call services while the appeal was pending.[24] Later that month, the court stayed the application of the Commission's interim rate caps to intrastate inmate calling services.[25] In November 2016, the court stayed the *2016 ICS Reconsideration Order* pending the outcome of the challenge to the *2015 ICS Order*.[26] In 2017, in *GTL v. FCC*, the D.C. Circuit vacated the rate caps in the *2015 ICS Order*, finding that the Commission lacked the statutory authority to regulate intrastate rates and that the methodology used to set the caps was arbitrary and capricious.[27] The court remanded for further proceedings with respect to certain rate cap issues; remanded the ancillary service charge caps in that *Order*; and vacated one of the annual reporting requirements in that *Order*.[28]

11. Because this procedural history is somewhat complicated, we provide background on the relevant issues in turn below.

12. *Ancillary Service Charges*. Ancillary service charges are fees that inmate calling services providers assess on inmate calling service consumers[29] that are not included in the per-minute rates assessed for individual calls.[30] In the *2015 ICS Order*, in light of the continued growth in the number and dollar amount of ancillary service charges, and the fact that such charges inflate the effective price that consumers pay for inmate calling services, the Commission adopted reforms to limit such charges.[31] The Commission established five types of permissible ancillary service charges, which are defined as follows: (1) Fees for Single-Call and Related Services—billing arrangements whereby an incarcerated person's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the inmate calling services provider or does not want to establish an account; (2) Automated Payment Fees—credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response, web, or kiosk; (3) Third-Party Financial Transaction Fees—the exact fees, with no markup, that inmate calling services providers are charged by third parties to transfer money or process financial transactions to facilitate a consumer's ability to make account payments via a third party; (4) Live Agent Fees—fees associated with the optional use of a live operator to complete inmate calling services transactions; and (5) Paper Bill/Statement Fees—fees associated with providing customers of inmate calling services an optional paper billing statement.[32] The Commission then capped the amount of each of these charges and prohibited inmate calling services providers from

[22] *Securus Techs. Inc. v. FCC*, No. 13-1280 (D.C. Cir. Jan. 13, 2014).

[23] *GTL v. FCC*, 866 F.3d at 405 (citing *Securus Techs. Inc. v. FCC*, No. 13-1280 (D.C. Cir. Dec. 16, 2014)).

[24] *Id.* (citing *GTL v. FCC*, No. 15-1461 (D.C. Cir. Mar. 7, 2016)).

[25] *Id.* at 405-06 (citing *GTL v. FCC*, No. 15-1461 (D.C. Cir. Mar. 23, 2016)).

[26] *Id.* at 406 (citing *Securus Techs. Inc. v. FCC*, No. 16-1321 (D.C. Cir. Nov. 2, 2016)).

[27] *Id.* at 402, 415-16.

[28] *Id.*

[29] *See* 47 CFR § 64.6000(e) (defining "Consumer" as "the party paying a Provider of Inmate Calling Services").

[30] *See id.* § 64.6000(a) (defining "Ancillary Service Charge" as "any charge Consumers may be assess[ed] for the use of Inmate Calling services that are not included in the per-minute charges assessed for individual calls").

[31] *2015 ICS Order*, 30 FCC Rcd at 12838-39, paras. 144-45.

[32] 47 CFR § 64.6000(a).

assessing any other ancillary service charges.[33] The D.C. Circuit stayed the rule setting the ancillary service charge cap for single-call services on March 7, 2016,[34] before the rest of the ancillary service charge caps were to go into effect. Therefore, the ancillary service charge cap for single-call services never became effective.[35]

13. In the *2015 ICS Order*, the Commission applied these caps to all services ancillary to inmate calling services, regardless of whether the underlying service was interstate or intrastate.[36] In particular, the Commission held that "section 276 of the Act authorizes the Commission to regulate charges for intrastate ancillary services."[37] On review, the D.C. Circuit held that "the *Order*'s imposition of ancillary fee caps in connection with *interstate* calls is justified" given the Commission's "plenary authority to regulate interstate rates under § 201(b), including 'practices . . . for and in connection with' interstate calls."[38] The court held, however, that just as the Commission lacks authority to regulate intrastate rates pursuant to section 276, the Commission likewise "had no authority to impose ancillary fee caps with respect to *intrastate* calls."[39] Because the court could not "discern from the record whether ancillary fees can be segregated between interstate and intrastate calls," it remanded the issue "to allow the Commission to determine whether it can segregate [the ancillary fee] caps on interstate calls (which are permissible) and the [ancillary fee] caps on intrastate calls (which are impermissible)."[40]

14. *Mandatory Pass-Through Taxes and Fees*. In the *2015 ICS Order*, the Commission found record evidence that inmate calling services providers were charging end users fees under the guise of taxes.[41] The Commission therefore held that such providers "are permitted to recover mandatory-applicable pass-through taxes and regulatory fees, *but without any additional mark-up or fees*."[42] To implement this determination, the Commission added rules governing an "Authorized Fee" and a "Mandatory Tax or Mandatory Fee."[43] The rule regarding authorized fees included language precluding markups in the absence of specific governmental authorization.[44] The rule regarding mandatory taxes or fees, however, contained no parallel language.[45] To correct this oversight, the Commission amended the rule in the *2016 ICS Reconsideration Order* to specify: "A Mandatory Tax or Fee that is passed through

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[33] *2015 ICS Order*, 30 FCC Rcd at 12839-40, para. 147; *see also id.* ("For fees for single-call and related services and third-party financial transaction fees, we allow providers to pass through only the charges they incur without any additional markup. We limit automated payment fees to $3.00, live agent fees to $5.95, and paper statement fees to $2.00. Apart from these specific fees, no additional ancillary service charges are allowed.").

[34] *Global Tel*Link v. FCC*, 2016 U.S. App. LEXIS 4934, at *7 (D.C. Cir. Mar. 7, 2016) (*March 7, 2016 GTL Order*); *see also 2016 ICS Public Notice*, 31 FCC Rcd at 2026.

[35] *See 2016 ICS Public Notice*, 31 FCC Rcd at 2026-27 (announcing that the rules limiting charges for ancillary services "other than the rule related to single-call services, which the D.C. Circuit stayed" were to take effect on March 17, 2016 for prisons and June 20, 2016 for jails).

[36] *2015 ICS Order*, 30 FCC Rcd at 12861-62, para. 196.

[37] *Id.*

[38] *GTL v. FCC*, 866 F.3d at 415 (emphasis in original) (quoting 47 U.S.C. § 201(b)).

[39] *Id.* (emphasis in original).

[40] *Id.* at 402, 415.

[41] *2015 ICS Order*, 30 FCC Rcd at 12858-59, para. 190.

[42] *Id.* at 12859, para. 191 (emphasis added).

[43] *Id.* at 12920-21, Appx. A.

[44] *Id.* at 12920, Appx. A.

[45] *Id.* at 12921, Appx. A.

to a Consumer may not include a markup, unless the markup is specifically authorized by a federal, state, or local statute, rule, or regulation."[46]

15. On review, the D.C. Circuit vacated the *2016 ICS Reconsideration Order* "insofar as it purport[ed] to set rate caps on inmate calling service" and remanded "the remaining provisions" of that *Order* to the Commission "for further consideration . . . in light of the disposition of this case and other related cases."[47] As a result, the Commission's rule governing Mandatory Taxes or Mandatory Fees was vacated to the extent that it "purport[ed] to set rate caps."[48]

16. *Rate Caps*. In the *2013 ICS Order*, in light of record evidence that rates for inmate calling services calls greatly exceeded the reasonable costs of providing service, the Commission adopted interim interstate rate caps of $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls.[49] In the *2015 ICS Order*, in light of "egregiously high" rates for intrastate inmate calling services calls, the Commission relied on section 276 and section 201(b) of the Act to adopt rate caps for both intrastate and interstate inmate calling services calls.[50] The Commission set tiered rate caps of $0.11 per minute for prisons; $0.14 per minute for jails with average daily populations of 1,000 or more; $0.16 per minute for jails with average daily populations of 350 to 999; and $0.22 per minute for jails having average daily populations of less than 350.[51] The Commission calculated these rate caps using industry-wide average costs and stated that this approach would allow providers to "recover average costs at each and every tier."[52] Additionally, the Commission held that site commissions—payments made by inmate calling services providers to correctional facilities or state authorities that are often required to win the contract for provision of service to a given facility[53]—were not costs reasonably related to the provision

[46] *2016 ICS Reconsideration Order*, 31 FCC Rcd at 9323.

[47] *Securus Techs. Inc. v. FCC*, No. 16-1321, 2017 U.S. App. LEXIS 26360, at *1 (D.C. Cir. Dec. 21, 2017) (per curiam) (*Securus v. FCC* or *Securus*).

[48] *Id*. at *1.

[49] *2013 ICS Order*, 28 FCC Rcd at 14111, para. 5. Under the Commission's rules, "Debit Calling" means "a presubscription or comparable service which allows an Inmate, or someone acting on an Inmate's behalf, to fund an account set up though a Provider that can be used to pay for Inmate Calling Services calls originated by the Inmate." 47 CFR § 64.6000(g). "Prepaid calling" means "a presubscription or comparable service in which a Consumer, other than an Inmate, funds an account set up through a Provider of Inmate Calling Services. Funds from the account can then be used to pay for Inmate Calling Services, including calls that originate with an Inmate." *Id.* § 64.6000(p). "Collect calling" means "an arrangement whereby the called party takes affirmative action clearly indicating that it will pay the charges associated with a call originating from an Inmate Telephone." *Id.* § 64.6000(d).

[50] *2015 ICS Order*, 30 FCC Rcd at 12768, 12813-18, paras. 7, 106-16.

[51] *Id*. at 12775, para. 22.

[52] *Id*. at 12790, para. 52 & n.170.

[53] *See 2013 ICS Order*, 28 FCC Rcd at 14124-25, paras. 33-34 (describing site commissions as "payments made from ICS providers to correctional facilities and related state authorities" and recognizing that such payments "can take the form of a percentage of gross revenue, a signing bonus, a monthly fixed amount, yearly fixed amount, or in-kind contributions"); *see also Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248, 3262, para. 38 (2002) (*2002 ICS Order*) (describing site commissions as "location rents that are negotiable by contract with the facility owners and represent an apportionment of profits between the facility owners and the providers of the inmate payphone service").

of inmate calling services.[54] The Commission therefore excluded site commission payments from the cost data used to set the rate caps.[55]

17. On reconsideration in 2016, the Commission increased the rate caps for both interstate and intrastate inmate calling services to expressly account for correctional facility costs that are directly and reasonably related to the provision of inmate calling services.[56] The Commission set the revised rate caps at $0.13 per minute for prisons; $0.19 per minute for jails with average daily populations of 1,000 or more; $0.21 per minute for jails with average daily populations of 350 to 999; and $0.31 per minute for jails with average daily populations of less than 350.[57]

18. On review, the D.C. Circuit in *GTL v. FCC* vacated the rate caps adopted in the *2015 ICS Order*.[58] First, the court held that the Commission lacked the statutory authority to cap intrastate inmate calling services rates.[59] The court explained that the Commission's authority over intrastate calls is, except as otherwise provided by Congress, limited by section 2(b) of the Act and nothing in section 276 of the Act overcomes this limitation.[60] In particular, section 276 "merely directs the Commission to 'ensure that all [inmate calling services] providers are fairly compensated' for their inter- and intrastate calls,"[61] and it "is not a 'general grant of jurisdiction' over intrastate ratemaking."[62]

19. Second, the D.C. Circuit held that the "Commission's categorial exclusion of site commissions from the calculus used to set [inmate calling services] rate caps defie[d] reasoned decisionmaking because site commissions obviously are costs of doing business incurred by [inmate calling services] providers."[63] The court directed the Commission to "assess on remand which portions of site commissions might be directly related to inmate calling services and therefore legitimate, and which are not."[64] The court did not reach inmate calling services providers' remaining arguments "that the exclusion of site commissions denies [them] fair compensation under [section] 276 and violates the Takings Clause of the Constitution because it forces providers to provide services below cost," and it stated that the Commission should address these issues on remand once it revisits the exclusion of site commissions.[65]

20. Third, the D.C. Circuit held that the Commission's use of industry-wide averages in setting rate caps was arbitrary and capricious because it lacked justification in the record and was not supported by reasoned decisionmaking.[66] More specifically, the court found the Commission's use of a weighted average per-minute cost to be "patently unreasonable" given that such an approach made calls with above-average costs unprofitable and thus did "not fulfill the mandate of [section] 276 that 'each and

[54] *2015 ICS Order*, 30 FCC Rcd at 12818-19, paras. 117-18.

[55] *Id.* at 12819, para. 118.

[56] *See generally 2016 ICS Reconsideration Order*.

[57] *Id.* at 9314-15, para. 27.

[58] *GTL v. FCC*, 866 F.3d at 402, 416.

[59] *Id.* at 408-12.

[60] *See id.* at 409-12.

[61] *Id.* at 409 (quoting 47 U.S.C. § 276(b)(1)(A)).

[62] *Id.* at 412 (internal citation omitted).

[63] *Id.* at 413.

[64] *Id.* at 414.

[65] *Id.*

[66] *Id.* at 402, 416.

every'" call be fairly compensated.[67] Additionally, the court found that the *2015 ICS Order* "advances an efficiency argument—that the larger providers can become profitable under the rate caps if they operate more efficiently—based on data from the two smallest firms," which "represent less than one percent of the industry," and that the *Order* did not account for conflicting record data.[68] The court therefore vacated this portion of the *2015 ICS Order* and remanded to the Commission for further proceedings.[69]

21. Also in 2017, in *Securus v. FCC*, the D.C. Circuit ordered the *2016 ICS Reconsideration Order* "summarily vacated insofar as it purports to set rate caps on inmate calling service" because the revised rate caps in that *Order* were "premised on the same legal framework and mathematical methodology" rejected by the court in *GTL v. FCC*.[70] The court remanded "the remaining provisions" of that *Order* to the Commission "for further consideration . . . in light of the disposition of this case and other related cases."[71] As a result of the D.C. Circuit's decisions in *GTL* and *Securus*, the interim rate caps that the Commission adopted in 2013 ($0.21 per minute for debit/prepaid calls and $0.25 per minute for collect calls) are in effect for interstate inmate calling services calls.

22. *More Recent Developments.* In the *2015 ICS Order*, the Commission directed that the Second Mandatory Data Collection be conducted two years from publication of Office of Management and Budget (OMB) approval of the information collection.[72] The Commission received such approval in January 2017 and publication occurred on March 1, 2017.[73] Accordingly, on March 1, 2019, inmate calling services providers submitted their responses to the Second Mandatory Data Collection.[74] The Commission's Wireline Competition Bureau (Bureau) and Office of Economics and Analytics (OEA) undertook a comprehensive analysis of the Second Mandatory Data Collection responses and conducted multiple follow-up discussions with inmate calling services providers to supplement and clarify their responses.[75]

23. In February 2020, the Bureau issued a public notice seeking to refresh the record on ancillary service charges in light of the D.C. Circuit's remand in *GTL v. FCC*.[76] The Bureau sought

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[67] *Id.* at 414 (internal citation omitted).

[68] *Id.* at 415.

[69] *Id.*

[70] *Securus v. FCC*, 2017 U.S. App. LEXIS 26360, at *4-5.

[71] *Id.* at *5.

[72] *2015 ICS Order*, 30 FCC Rcd at 12862, para. 198.

[73] *See* FCC, Rates for Interstate Inmate Calling Services; Correction, 82 Fed. Reg. 12922 (Mar. 8, 2017), *correcting* FCC, Rates for Interstate Inmate Calling Services, 82 Fed. Reg. 12182 (Mar. 1, 2017).

[74] *Wireline Competition Bureau Reminds Providers of Inmate Calling Services of the March 1, 2019 Deadline for Data Collection Responses*, WC Docket No. 12-375, Public Notice, 34 FCC Rcd 515 (WCB 2019) (*2019 Data Collection Public Notice*).

[75] *See, e.g.*, Letter from Chérie R. Kiser, Counsel for Global Tel*Link Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed May 19, 2020) (amending GTL's Second Mandatory Data Collection response "to address questions raised by Commission staff"); Letter from Sharon R. Warren, Consultant to Crown Correctional Telephone, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed May 5, 2020); Letter from Sharon R. Warren, Consultant to Network Communications International Corp, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed May 5, 2020) (explaining NCIC's amendment to its Mandatory Data Collection responses in response to questions raised by Commission staff); Letter from Marcus W. Trathen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed Apr. 28, 2020) (amending Pay Tel's Second Mandatory Data Collection response and noting questions raised by Commission staff).

[76] *Wireline Competition Bureau Seeks to Refresh the Record on Ancillary Service Charges Related to Inmate Calling Services*, WC Docket No. 12-375, Public Notice, 35 FCC Rcd 189 (WCB 2020) (*Ancillary Services Refresh Public Notice*).

comment on, among other issues, (1) whether each permitted inmate calling services ancillary service charge may be segregated between interstate and intrastate calls and, if so, how; (2) how the Commission should proceed in the event any permitted ancillary service is "jurisdictionally mixed" and cannot be segregated between interstate and intrastate calls; and (3) any steps the Commission should take to ensure that providers of interstate inmate calling services do not circumvent or frustrate the Commission's ancillary service charge rules.[77]

24. In April 2020, inmate calling services providers submitted data pursuant to the Commission's annual reporting requirements and they did so using a revised annual reporting form and accompanying instructions.[78] First, the Bureau made minor revisions to the form and instructions in light of the D.C. Circuit's vacatur of the Commission's annual reporting requirement for video visitation services offered by inmate calling services providers.[79] The *GTL* court held that the video visitation services reporting requirement adopted in the *2015 ICS Order* was "too attenuated to the Commission's statutory authority to justify this requirement."[80] Accordingly, the Bureau eliminated questions regarding video visitation from the annual reporting reform.[81]

25. Second, the Bureau made additional revisions to the annual reporting form and instructions based on its experience in analyzing past annual reports and based on formal and informal input from inmate calling services providers, thereby making the annual reports easier to understand and analyze.[82] Bureau and OEA staff used the April 2020 annual report responses to supplement their understanding of the Second Mandatory Data Collection responses.

26. Commission staff also analyzed the intrastate rate data submitted as part of inmate calling services providers' most recent annual reports. Staff's analysis reveals that the vast majority of inmate calls—roughly 80%—are reported to be intrastate and that inmate calling services providers are charging egregiously high intrastate rates across the country. Intrastate rates for debit or prepaid calls substantially exceed interstate rates in 45 states, with 33 states allowing rates that are at least double the Commission's cap and 27 states allowing excessive "first-minute" charges up to *26 times* that of the first minute of an interstate call. Indeed, while interstate rates for the first minute and all subsequent minutes may not exceed $0.25, inmate calling services providers' first-minute charges for intrastate calls may range from $1.65 to $6.50. For example, one provider reported the first-minute intrastate rate of $5.341 and the additional per-minute intrastate rate of $1.391 in Arkansas while reporting the per-minute interstate rate of $0.21 for the same correctional facility.[83] Similarly, another provider reported the first-minute intrastate rate of $6.50 and the additional per-minute intrastate rate of $1.25 in Michigan while reporting

[77] *Id*.

[78] *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 2020) (*2020 OMB Renewal Public Notice*).

[79] *GTL v. FCC*, 866 F.3d at 415.

[80] *See id*. (vacating the reporting requirement because the Commission failed to "explain how its statutory authority extends to video visitation services as a 'communication[] by wire or radio' under § 201(b) for interstate calls or as an 'inmate telephone service' under § 276(d) for interstate or intrastate calls").

[81] *See 2020 OMB Renewal Public Notice*, 35 FCC Rcd at 1456 n.6.

[82] *See id*. at 1456 (stating that the Bureau made revisions pursuant to authority delegated by the Commission in the *2015 ICS Order*, 30 FCC Rcd at 12892, para. 268, and pursuant to OMB approval); *see also* Letter from Pamela Arluk, Chief, Pricing Policy Division, Wireline Competition Bureau, FCC, to Marcus Trathen, Counsel for Pay Tel Communications, Inc., 32 FCC Rcd 4154 (WCB 2017) (responding to a request for clarification of aspects of the annual reporting requirements).

[83] Annual Report of Securus Technologies, LLC, for 2019, WC Docket No. 12-375 (filed Mar. 31, 2020) (Securus Annual Report) (Tab II. ICS Rates - Domestic, Row 91 and Tab II(a). Narrative - New, Row 97).

the per-minute interstate rate of $0.25 for the same correctional facility.[84] Further, Commission staff identified instances in which a 15-minute intrastate debit or prepaid call costs as much as $24.80—almost seven times more than the maximum $3.15 that an interstate call of the same duration would cost.[85]

III. REPORT AND ORDER ON REMAND

27. In this Report and Order on Remand (*Remand Order*), we respond to the D.C. Circuit's directive in *GTL v. FCC* that the Commission determine whether ancillary service charges can be segregated between interstate and intrastate inmate telephone service calls.[86] We also amend our rule regarding mandatory pass-through taxes and fees in light of the court's vacatur and remand in *Securus v. FCC*. Additionally, we revise certain of our other inmate calling services rules to comport with the D.C. Circuit's decisions in those cases.

A. Ancillary Service Charges

28. We find that ancillary service charges generally cannot be practically segregated between the interstate and intrastate jurisdiction except in the limited number of cases where, at the time a charge is imposed and the consumer accepts the charge, the call to which the service is ancillary is a clearly intrastate-only call. The record strongly supports this determination. As such, providers are generally prohibited from imposing any ancillary service charges in connection with inmate calling services other than those specified in our rules and providers are generally prohibited from imposing charges in excess of our applicable ancillary service fee caps.

1. The Extent of the Commission's Authority

29. In creating a dual federal-state regulatory regime to govern interstate and intrastate communications services in sections 1 and 2(b) of the Act, Congress "attempt[ed] to divide the world of telephone regulation neatly into two separate components."[87] However, "since most aspects of the communications field have overlapping interstate and intrastate components, these two sections do not create a simple division."[88] Decades of precedent reconciling these statutory provisions recognizes that the Commission may regulate services having both interstate and intrastate components, referred to as "jurisdictionally mixed" services, where it is impossible or impracticable to separate out their interstate and intrastate components.[89]

30. Courts have recognized that as "a basic underpinning of our federal system . . . state regulation will be displaced to the extent that it stands as an obstacle to the accomplishment and execution

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[84] Legacy Long Distance International, Inc., FCC Form 2301(a) and 2301(b) – Inmate Calling Services Annual Report, WC Docket No. 12-375 (filed Apr. 9, 2020) (Legacy Annual Report) (Tab Section II - Redacted, Row 86 and Tab Section II(a) - Redacted, Row 246).

[85] 47 CFR § 64.6030 (setting an interim interstate rate cap of $0.21 per minute for prepaid and debit calls).

[86] *GTL v. FCC*, 866 F.3d at 415. Because the ancillary service charge cap for single-call services never became effective as a result of the D.C. Circuit's *March 7, 2016 Order* (*GTL v. FCC*, 2016 U.S. App. LEXIS 4934, at *7 (D.C. Cir. Mar. 7, 2016)), we also reinstate that rule as part of our response to the D.C. Circuit's remand on ancillary service charges.

[87] *Pub. Util. Comm'n of Tex. v. FCC*, 886 F.2d 1325, 1329 (D.C. Cir. 1989).

[88] *Id*.

[89] *See, e.g.*, *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 375 n.4 (1986) (recognizing that the Commission may pre-empt state regulation when it is not possible to separate the interstate and intrastate components of the Commission's regulation); *see also Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22413, para. 17 (2004) (*Vonage Order*) (describing jurisdictionally mixed services as "[s]ervices that are capable of communications both between intrastate end points and between interstate end points"), *aff'd by Minn. Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

of the full purposes and objectives of Congress."[90] Thus, although the Commission is "generally forbidden from entering the field of intrastate communication service,"[91] courts have interpreted the Act and the Supremacy Clause of the U.S. Constitution to allow federal regulation of the intrastate portion of jurisdictionally mixed services in spite of section 2(b) where: "(1) the matter to be regulated has both interstate and intrastate aspects; (2) FCC preemption [regulation] is necessary to protect a valid federal regulatory objective; and (3) state regulation would 'negate[] the exercise by the FCC of its own lawful authority' because regulation of the interstate aspects of the matter cannot be 'unbundled' from regulation of the intrastate aspects."[92] When all three criteria are met, the Commission may regulate the jurisdictionally mixed service falling within the "impossibility exception" as jurisdictionally interstate.[93]

31. Stated differently, where the Commission has jurisdiction under section 201(b) of the Act to regulate rates, charges, and practices of interstate communications services, the impossibility exception extends that authority to the intrastate portion of jurisdictionally mixed services "where it is impossible or impractical to separate the service's intrastate from interstate components" and state regulation of the intrastate component would interfere with valid federal rules applicable to the interstate component.[94]

32. The Bureau's public notice seeking to refresh the record sought comment on how the Commission should proceed in the event a permitted ancillary service is "jurisdictionally mixed" and cannot be segregated between interstate and intrastate calls.[95] No commenter disputed the Commission's authority to regulate jurisdictionally mixed ancillary services charges that cannot be segregated.[96] Where a consumer of inmate calling services would incur an ancillary service charge in connection with inmate telephone service and the charge is not clearly and entirely applicable to intrastate calling, we apply the

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[90] *La. Pub. Serv. Comm'n*, 476 U.S. at 374.

[91] *GTL v. FCC*, 866 F.3d at 403 (quoting *New England Pub. Comm'ns Council, Inc. v. FCC*, 334 F.3d 69, 75 (D.C. Cir. 2003)).

[92] *Pub. Serv. Comm'n of Md. v. FCC*, 909 F.2d 1510, 1515 (D.C Cir. 1990) (citing *Illinois Bell Tel. Co. v. FCC*, 883 F.2d 104, 113 (D.C. Cir. 1989); *National Assn. of Regulatory Util. Cmmrs. v. FCC*, 880 F.2d 422, 431 (D.C. Cir. 1989)); Wright Petitioners Comments, WC Docket No. 12-375, at ii (filed Mar. 20, 2020) (Wright Petitioners Mar. 20, 2020 Comments); Pay Tel Communications, Inc., Comments, WC Docket No. 12-375, at 12-14 (filed Mar. 20, 2020) (Pay Tel Mar. 20, 2020 Comments); *accord Vonage Order*, 19 FCC Rcd at 22413, para. 17.

[93] *California v. FCC*, 905 F.2d 1217, 1242-44 (9th Cir. 1990); *accord Vonage Order*, 19 FCC Rcd at 22414-15, para. 19 (treating jurisdictionally mixed service at issue as jurisdictionally interstate for regulatory purposes); *MTS/WATS Market Structure Separations Order*, CC Docket No. 78-72, Decision and Order, 4 FCC Rcd 5660, 5660 n.7 (1989); *Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation*, Memorandum Opinion and Order, 7 FCC Rcd 1619, 1620, para. 7 (1992) (*BellSouth MemoryCall Order*).

[94] *Vonage Order*, 19 FCC Rcd at 22413, para. 17; *see also* Wright Petitioners Mar. 20, 2020 Comments at 2, 11-12; *see also* Pay Tel Mar. 20, 2020 Comments at 12-14; Wright Petitioners Reply, WC Docket No. 12-375, at 4 (filed Apr. 21, 2020) (Wright Petitioners Apr. 21, 2020 Reply); Letter from Bertram Lee, Policy Council, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed July 23, 2020) (expressing support for treating ancillary service charges as generally jurisdictionally mixed). As the *Vonage Order* made clear, "we need not demonstrate absolute future impossibility to justify federal preemption here. We need only show that interstate and intrastate aspects of a regulated service or facility are inseverable as a practical matter in light of prevailing technological and economic conditions." *Vonage Order*, 19 FCC Rcd at 22423, para. 29 (internal quotation marks and citation omitted).

[95] *Ancillary Services Refresh Public Notice*, 35 FCC Rcd at 190.

[96] *See, e.g.*, Pay Tel Communications, Inc., Reply, WC Docket No. 12-375, at 7 (filed Apr. 21, 2020) (Pay Tel Apr. 21, 2020 Reply) (stating that "[a]ll commenters agree that the Commission has the authority to regulate ICS ancillary service charges so long as they are jurisdictionally mixed, incapable of segregation, and a failure to regulate would interfere with the Commission's valid regulatory goals").

impossibility exception criteria to determine whether that ancillary service charge should be subject to our authority and rules.[97]

2. Applying Our Authority to Particular Ancillary Services

33. *Single-Call Service (and Related Service) Fees*. Where no prepaid or debit inmate calling services account has been established, an incarcerated individual can make individual collect calls to family members or others. Third parties assess fees on a per-call basis to bill the called family member or other party for such calls.[98] In 2015, the Commission adopted rules that would preclude inmate calling services providers from charging more than the exact fee the third-party charges for these transactions, with no markup.[99]

34. Because single-call service is associated with a specific call, we find that the ancillary service can be jurisdictionally determined based on the classification—interstate or intrastate—of the underlying call.[100] Single-call service (and related service) associated with an interstate call is subject to our ancillary service charge rules.[101] Single-call service (and related service) associated with an intrastate call is beyond the reach of our regulations.

35. *Automated Payment Fees*. Automated payments fund prepaid or debit accounts that can be used to pay for inmate calling services. Inmate calling services consumers typically make these payments to fund their accounts to pay for future calls to family or other loved ones and any associated ancillary services charge fees.[102] These payments occur through multiple methods or types of transactions including "credit card payment, debit card payment, and bill processing fees, including fees for payments

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[97] We reject one federal District Court's suggestion that *GTL v. FCC* held that the Commission may not cap ancillary fees "except to the extent those for interstate calls 'can be segregated' from intrastate calls." *Mojica v. Securus Technologies, Inc.*, 2018 WL 3212037, at *6 (W.D. Ark. June 29, 2018) (*Mojica v. Securus*). As Pay Tel points out, the District Court did "not engage in the relevant preemption analysis—indeed not once [did] the decision even mention the term 'mixed jurisdiction.'" Pay Tel Mar. 20, 2020 Comments at 15. And no party argues that *Mojica v. Securus* provides the appropriate reading of *GTL v. FCC*. Given the long history of Supreme Court and federal appellate court precedent on jurisdictionally mixed services and the specific language of the D.C. Circuit in *GTL v. FCC* (which remanded the issue of "whether ancillary fees can be segregated between interstate and intrastate calls" to the Commission "for further consideration"), we find that the D.C. Circuit did not instruct the Commission on how it should proceed if it were impossible or impracticable to segregate some ancillary fees but instead left that question open for the Commission to resolve in the first instance.

[98] 47 CFR § 64.6000(a)(1).

[99] *See 2015 ICS Order*, 30 FCC Rcd at 12857, paras. 186-87; *id.* at 12920, Appendix A (new section 64.6020(b)(2)).

[100] Securus Technologies, LLC, Comments, WC Docket No. 12-375, at 4 (filed Mar. 20, 2020) (Securus Mar. 20, 2020 Comments); Wright Petitioners Mar. 20, 2020 Comments at 21.

[101] In the *2015 ICS Order*, the Commission held that "for single call and related services, we permit ICS providers to charge the amount of the third-party financial transaction (with no markup) added to a per-minute rate no higher than the applicable rate cap." *2015 ICS Order*, 30 FCC at 12857, para. 186; *see also id.* at 12857, para. 187; *id.* at 12920, Appx. A (new section 64.6020(b)(2)). However, the D.C. Circuit stayed section 64.6020(b)(2) before that rule took effect. *March 7, 2016 Order*, 2016 U.S. App. LEXIS 4934, at *7. The D.C. Circuit in *GTL* remanded the "imposition of ancillary fee caps" in the *2015 ICS Order* without specifically addressing the effect of that remand on the single-call service rule or dissolving the court's earlier stay of that rule. *GTL v FCC*, 868 F.3d at 415. The "no-mark-up" portion of the single-call service rule never became effective. Because the D.C. Circuit remanded section 64.6020(b)(2) without vacating, finding fault, or otherwise addressing the no-markup clause, we reinstate section 64.6020(b)(2) today for the same reasons we adopted this prohibition in 2015. *See 2015 ICS Order* at 12857-58, paras. 188-89. Nothing in the record of this proceeding since that time suggests we should refrain from doing so, and hence we have good cause to reinstate section 64.6020(b)(2) without further notice and comment. *See* 5 U.S.C. § 553(b).

[102] Wright Petitioners Mar. 20, 2020 Comments at 14.

by interactive voice response[], web, or kiosk."[103] They are also made to pay inmate calling service bills for calls that have already been made.[104] The Commission limits these fees to a maximum of "$3.00 per use," based on its prior finding that a $3.00 cap would "more than ensure[] that ICS providers [could] recoup the costs of offering these services."[105]

36. Because a prepaid or debit account can generally be used to make both interstate and intrastate calls, automated payment fees are generally jurisdictionally mixed and subject to our ancillary service charge rules. For example, accounts that allow the dialing of any mobile telephone number (such as one assigned by a mobile wireless provider or a nomadic interconnected voice over Internet Protocol (VoIP) provider) are inherently jurisdictionally mixed because the called party need not be located in the same state as the incarcerated individual at the time of a call. This is true even if the called party's residence, as commenters point out, is in the same state as the correctional facility.[106] And it is true even if the area code and NXX prefix of the called party's telephone number are associated with the state of the correctional facility.[107] Similarly, if the account only allows a certain number of non-mobile numbers to be called, such an account is jurisdictionally mixed if any one of those numbers is assigned to a fixed location in a different state.[108] Indeed, accounts where an incarcerated individual may make a call to any telephone number or add a telephone number to the list of authorized numbers (even if that telephone number must go through a screening process before it is authorized) may be inherently jurisdictionally mixed. Because automated payments typically are made to fund accounts *before* calls are completed or fees are incurred, the record suggests that it may be impractical, if not impossible, to connect these payments to any specific subsequent calls made.[109] When automated payments cannot be segregated by jurisdiction, they are subject to our ancillary service charge rules.[110]

37. We recognize, however, that automated payments are sometimes made to pay inmate calling service bills *after* calls have already been made.[111] In that circumstance, an inmate calling services provider could potentially confirm that not one call with an outstanding balance was made that crossed state lines and thus that the service charge would be ancillary only to intrastate inmate calling services. Because we must respect the boundary on our jurisdiction drawn by Congress, we cannot impose our automated payment fee cap in such circumstances.

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[103] 47 CFR § 64.6000(a)(1).

[104] *Id*.

[105] *2015 ICS Order*, 30 FCC Rcd at 12847-48, para. 167; *see* 47 CFR § 64.6020(b)(1).

[106] Pay Tel Mar. 20, 2020 Comments at 8-9; Wright Petitioners Apr. 21, 2020 Reply at 5.

[107] Ten-digit telephone numbers in the United States are "composed of a 3-digit numbering plan area code (NPA code), a 3-digit central office code (NXX code) and a 4-digit line number." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 et al.*, CC Docket No. 96-98 et al., Third Order on Reconsideration of Second Report and Order and Memorandum Opinion and Order, 14 FCC Rcd 17964, 17970, para. 5 (1999).

[108] *See* Securus Mar. 20, 2020 Comments at 4. We use a fixed landline telephone number in our example here but recognize that fixed wireless technology may also have the same "fixed" location characteristics as fixed wireline service and thus the same jurisdictional analysis would apply.

[109] *See, e.g.*, Pay Tel Mar. 20, 2020 Comments at 8 (arguing that inmate calling services "accounts are not segregated into interstate versus intrastate components, nor could they reliably be so segregated"); Wright Petitioners Mar. 20, 2020 Comments at ii-iii (asserting that "it is clearly impossible to attribute [an automated payment] fee to as yet unmade interstate or intrastate calls). *But see* Securus Mar. 20, 2020 Comments at 5-6; NCIC July 28, 2020 *Ex Parte* at 3.

[110] Global Tel*Link Corporation Comments, WC Docket No. 12-375, at 4-5 (filed Mar. 20, 2020) (GTL Mar. 20, 2020 Comments); Wright Petitioners Mar. 20, 2020 Comments at 14-16.

[111] 47 CFR § 64.6000(a)(1) (referencing "bill processing fees").

38. We reject Securus' claim that "since the jurisdiction of any given payment transaction depends on the specific circumstances surrounding the transaction, Securus does not believe that the Commission can reach any conclusion regarding the application of these [Automated Payment Fee] caps as a generic matter."[112] It is precisely because providers generally impose (and consumers are charged) these fees *before* it is possible to determine whether such payments are ancillary to interstate or intrastate calls that precedent dictates that we find these automated payments to be jurisdictionally mixed—and thus application of our rule to all such transactions is necessary to protect interstate callers.

39. *Third-Party Financial Transaction Fees*. Consumers often make use of third parties, such as Western Union or MoneyGram, to transfer money or process financial transactions that enable these consumers to make payments to inmate calling services accounts.[113] These third parties charge fees to inmate calling services providers, which the providers then pass on to consumers.[114] Our ancillary services charges rules limit the amount of third-party fees that an inmate calling services provider can pass on to consumers to the exact third-party fees, with no markup.[115]

40. As with automated payments, because third-party financial transactions typically fund accounts *before* calls are placed or associated fees are incurred, it is generally impossible to know whether the fees will be applied to interstate calls, intrastate calls, or a mix of the two.[116] Therefore, third-party financial transactions are generally jurisdictionally mixed and subject to our ancillary service charge rules in the same way as automated payments.[117]

41. To the extent Securus suggests that third-party financial transactions "raise no jurisdictional dispute,"[118] we agree so long as such a transaction is tied to a particular jurisdictionally identifiable call—which, as with automated payments, we would expect would only occur if the fee is imposed *after* calls have been made. And such an inquiry would only matter where the inmate calling services provider can confirm that no call with an outstanding balance was interstate or international—otherwise, the only way to protect the interstate caller from unjust and unreasonable fees is to apply our ancillary service charge rules to the entire third-party financial transaction.

42. *Live Agent Fees*. Consumers may optionally use live operators to complete a range of inmate calling services-related tasks, including setting up an account, adding money to an account, or assisting with making a call.[119] In practice, multiple transactions can be, and often are, made via a single live operator interaction, which the Commission caps at $5.95 per interaction, regardless of the number of tasks the live operator completes in a single session.[120]

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[112] Securus Mar. 20, 2020 Comments at 5-6.

[113] Wright Petitioners Mar. 20, 2020 Comments at 18.

[114] Securus Mar. 20, 2020 Comments at 4.

[115] 47 CFR § 64.6020(b)(5); *2015 ICS Order*, 30 FCC Rcd at 12848-49, para. 168; 47 CFR § 64.6020(b)(4).

[116] Pay Tel Mar. 20, 2020 Comments at 11-12 (asserting that differentiating third-party fees between interstate or intrastate services is not feasible).

[117] We decline in this *Order* to consider NCIC's suggestion that we further cap third-party processing fees. *See* Network Communications International Corp. Comments, WC Docket No. 12-375, at 5 (filed Mar. 20, 2020) (NCIC Mar. 20, 2020 Comments). Setting aside whether the Commission would have the authority to prohibit an inmate calling services provider from passing along the costs it itself incurs for conducting a service on a consumer's behalf, NCIC's suggestion is beyond the scope of the remand in this proceeding. Instead, we seek comment on NCIC's request in the accompanying *Further Notice*.

[118] Securus Mar. 20, 2020 Comments at 4.

[119] 47 CFR § 64.6000(a)(3).

[120] *2015 ICS Order*, 30 FCC Rcd at 12848-49, para. 168; 47 CFR § 64.6020(b)(3).

43. As with automated payments and third-party financial transactions, because live agents are often used to set up accounts or add money to accounts *before* any call is made, live agent services are generally jurisdictionally mixed and subject to our ancillary service charge rules. In contrast, to the extent a live agent is used to place a particular call, then that service can be jurisdictionally determined by the classification of the call, just as single-call services are. And to the extent a live agent is used *after* calls have been made to, for example, pay a bill, then our ancillary service charge rules apply unless every call with an outstanding balance can be determined to be intrastate. Similarly, to the extent a live agent session is used to complete multiple tasks, we find that service is jurisdictionally mixed (and thus subject to our ancillary service charge rules) unless the inmate calling services provider can demonstrate that each action taken by the live agent was ancillary only to an intrastate telephone service.[121]

44. We reject Securus' claim that because Live Agent fees are based on multiple different types of transactions, we cannot reach a conclusion as to whether or not the Commission's ancillary service charge rule applies.[122] Again, we can reach a conclusion here precisely because we have found that live agent services can, and do, involve both interstate and intrastate tasks within a single transaction session.[123] As a result, failing to treat live agent services as generally jurisdictionally mixed would conflict with the federal law requiring these fees to be just and reasonable for all interstate callers.

45. *Paper Bill Fees*. Inmate calling services consumers have the option to obtain paper bills or statements reflecting all charges that occurred during a billing cycle, including those related to calls and ancillary service charges.[124] The Commission has capped fees for paper bills at $2.00 per statement.[125]

46. Because the creation of a paper bill occurs only *after* calls have been made, it may be possible to jurisdictionally segregate this service. Generally, we would expect such bills to be jurisdictionally mixed as incarcerated people may make calls to those both in and outside of the state of the correctional facility—and thus subject to our ancillary service charge rules.[126] However, if an inmate calling services provider can confirm that no call on the bill is interstate or international, then the paper bill service would only be ancillary to intrastate calls and beyond the reach of our rules.

3. Related Issues

47. *Effect on State Regulation.* As in prior cases, we exercise our authority under the Supremacy Clause to preempt state regulation of jurisdictionally mixed services to the extent that such regulation conflicts with federal law.[127] Our rules apply to all ancillary service charges imposed for and in connection with interstate inmate calling services. To the extent those charges relate to accounts or

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[121] *See, e.g.*, Pay Tel Mar. 20, 2020 Comments at 10; Wright Petitioners Mar. 20, 2020 Comments at 16-17.

[122] Securus Mar. 20, 2020 Comments at 5-6.

[123] *2015 ICS Order*, 30 FCC Rcd at 12848, para. 168 (limiting the live agent fee to one charge per interaction with a live operator "regardless of the number of tasks completed in the call").

[124] 47 CFR § 64.6000(a)(4).

[125] *2015 ICS Order*, 30 FCC Rcd at 12849, para. 169; 47 CFR § 64.6020(b)(4).

[126] *See* Pay Tel Mar. 20, 2020 Comments at 11; Wright Petitioners Mar. 20, 2020 Comments at 19-20; *see also* Securus Mar. 20, 2020 Comments at 5 (arguing that any paper bill statement is subject to the Commission's jurisdiction and fee cap based on the Truth-in-Billing principles).

[127] *See, e.g.*, *Vonage Order*, 19 FCC Rcd at 22418, para. 23 n.86; *Qwest Corp. v. Minnesota Pub. Utils. Comm'n*, 380 F.3d 367, 372 (8th Cir. 2004) (explaining that "[t]he FCC has authority to preempt state regulation of telecommunications where it is not possible to separate the interstate and intrastate aspects of a communications service, and where the Commission concludes that federal regulation is necessary to further a valid federal regulatory objective"); *BellSouth MemoryCall Order*, 7 FCC Rcd at 1622-23, paras. 17-22 (using preemption under the Supremacy Clause for a Georgia voice mail regulation of jurisdictionally mixed service).

transactions having interstate as well as intrastate components, the federal requirements will operate as ceilings limiting potential state action.[128] To the extent a state allows or requires an inmate calling services provider to impose fees for ancillary services other than those permitted by our rules, or to charge fees higher than the caps imposed by our rules, that state law or requirement is preempted except where such ancillary services are provided only in connection with intrastate inmate calling services. In contrast, to the extent a state allows or requires an inmate calling services provider to impose fees lower than those contained in our rules, that state law or requirement is not preempted by our action here.

48. *Attempts to Exploit the Dual Regulatory Environment and Evade Our Rules*. We share the concern of commenters that inmate calling services providers may undermine or negate our caps on ancillary service charges for interstate inmate calling services (and, in turn, our interstate rate caps) by departing from their current business practices and taking new steps to segregate interstate and intrastate activity.[129] For example, commenters point out that providers may newly decide to create separate paper bills for intrastate and interstate services in order to evade our cap on paper bill fees.[130] We recognize, in view of the D.C. Circuit's decision in *GTL*, that the Commission lacks authority to limit the fees providers assess for purely intrastate activity.[131] But it is within the Commission's authority to ensure that fees for interstate activity are just and reasonable.[132] And because providers have not historically distinguished between interstate and intrastate ancillary service charges,[133] we anticipate that the costs associated with providing jurisdictionally separate ancillary services, should providers seek to do so in the future, would often or always be "common" to both the interstate and intrastate service. It would frustrate our efforts to ensure that charges for interstate ancillary services are just and reasonable if providers could recover, through their interstate ancillary service charges, costs that should be allocated to a parallel intrastate ancillary service, or that providers have already recovered through their intrastate ancillary service charges.

49. To ensure that providers do not negate the effectiveness of our caps on interstate ancillary service charges in this manner, we determine that if a provider takes new steps to segregate interstate and intrastate activity (for example, by providing separate paper bills for interstate and intrastate inmate calling services, and assessing separate ancillary service charges for those bills), the Commission will presumptively consider such actions as unjust and unreasonable practices that are prohibited under federal law. We direct the Wireline Competition Bureau and the Enforcement Bureau to take appropriate action

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[128] *See 2015 ICS Order*, 30 FCC Rcd at 12864, para. 205; *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17935, para. 801 (2011) (*USF/ICC Transformation Order*), *pets. for review denied sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); *see also* Letter from Andrew D. Lipman, Morgan, Lewis & Bockius, LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1-2 (filed July 23, 2015).

[129] *See* Pay Tel Mar. 20, 2020 Comments at 4-6; Pay Tel Apr. 21, 2020 Reply at 7; Wright Petitioners Apr. 21, 2020 Reply at 8-9; *see also Ancillary Services Refresh Public Notice*, 35 FCC Rcd at 191 & n.18 (seeking comment on any additional steps the Commission should adopt so that "its actions on remand 'properly reflect[]' the reforms adopted in 2015 and that providers of interstate ICS do not circumvent or frustrate the Commission's ancillary service charge rules").

[130] *See* Pay Tel Mar. 20, 2020 Comments at 11; Wright Petitioners Mar. 20, 2020 Comments at 20.

[131] *See GTL v. FCC*, 866 F.3d at 415 (holding that the agency lacks "authority to impose ancillary fee caps with respect to *intrastate* calls").

[132] 47 U.S.C. § 201(b).

[133] *See* GTL Mar. 20, 2020 Comments at 4 ("GTL has not divided ancillary service charges into "interstate" and "intrastate" categories."); *see also* Pay Tel Mar. 20, 2020 Comments at 6-7 (stating that "the provider has no practical way of assessing the fee such that it is only associated with interstate calls"); Securus Technologies, LLC, Reply, WC Docket No. 12-375, at 3-4 (filed Apr. 21, 2020) (Securus Apr. 21, 2020 Reply) (asserting that there is no evidence that any provider has "tr[ied] to impose separate interstate and intrastate ancillary charges on a single transaction").

should they become aware of such actions. Any inmate calling services provider that takes such actions should be prepared to demonstrate to the Commission that its affected interstate ancillary service charges are just and reasonable, including that the affected charges do not recover jurisdictionally common costs that are already, or should properly be, recovered through the provider's corresponding intrastate ancillary service charges.

50. Relatedly, we caution providers that they are prohibited, either directly or indirectly, from imposing ancillary service charges falling outside the five categories of charges permissible under our rules, and that they are prohibited from collecting, directly or indirectly, amounts that exceed the ancillary service fee caps set forth in our rules.[134] We further caution that we intend to exercise the full breadth of the agency's jurisdiction to curb attempts to evade our rate cap and ancillary service charge rules through arrangements with third parties. For example, one commenter has suggested that other providers may have entered into arrangements with a third party in connection with single-call service transactions whereby excessive one-time transaction fees associated with these calls are imposed, passed on without markup to the consumer of the inmate calling service, and then the revenue obtained from the consumer is shared by the service provider and the third party.[135] Evidence of arrangements such as this that appear to result in the service provider indirectly marking up the third-party transaction fee in circumvention of our rules is subject to immediate referral to the Enforcement Bureau for investigation.

51. Similarly, inmate calling services providers are required to certify annually that the information in their Annual Reports, including the information on their ancillary services fees, is "true and accurate" and that they are in compliance with our inmate calling services rules.[136] We will not hesitate to take action to ensure full compliance with our ancillary services fee caps and other inmate calling services rules. To that end, we direct the Enforcement Bureau to issue an Enforcement Advisory, within 60 days of the effective date of this Order, reminding inmate calling services providers of their obligations under our rules, their duty of candor in connection with their interactions with the Commission,[137] and the potential penalties for noncompliance.[138]

52. *Classifying Calls by Jurisdiction*. There is significant debate within the record on whether it is possible for inmate calling services providers to classify the jurisdiction of certain calls and thus the jurisdiction of the services ancillary to such calls. On the one hand, GTL argues that the "jurisdictional nature of calls themselves is easily classified as either interstate or intrastate based on the call's points of origin and termination,"[139] and Securus asserts that an inmate calling services provider knows the jurisdiction of a call because it is "from a known originating telephone number to a single, known terminating number."[140] On the other hand, Pay Tel argues that we should generally treat inmate

[134] 47 CFR § 64.6020; *see* Appx. A (Final Rules) (amending 47 CFR § 64.6020(a)); *see* Public Interest Advocates July 29, 2020 *Ex Parte* at 4.

[135] *See* Letter from Lee G. Petro, Counsel for NCIC Inmate Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1-2 & Exh. A (filed July 28, 2020) (NCIC July 28, 2020 *Ex Parte*).

[136] *See* 47 CFR § 64.6060; *see also* FCC Form 2301(b) – Inmate Calling Services Annual Certification Form. The certifying senior executive must have "first-hand knowledge of the accuracy and completeness of the information provided" in the provider's Annual Report and also "acknowledge that failure to comply with the [Commission's inmate calling services rules] may result in civil or criminal prosecution." *Id.*

[137] *See generally Securus Technologies, Inc., et al.*, File No. EB-IHD-17-000225128, Order, 32 FCC Rcd 9552 (2017).

[138] *See* Public Interest Advocates July 29, 2020 *Ex Parte* at 4.

[139] GTL Mar. 20, 2020 Comments at 4.

[140] Securus Mar. 20, 2020 Comments at 4; *id.* (asserting it is easy to determine the jurisdictional nature of a single-call service).

calling services as jurisdictionally mixed across the board because providers cannot practically and reliably determine the location of each called party.[141]

53. This confusion calls for some clarification. *First*, we remind providers that the jurisdictional nature of a call depends on the physical location of the endpoints of the call[142] and not on whether the area code or NXX prefix of the telephone number, or the billing address of the credit card associated with the account, are associated with a particular state.[143] *Second*, we disagree with Pay Tel's argument that the location of a wireless caller is unknowable.[144] As Securus points out, "wireless carriers can determine the locations of their customers at the time of each call, so it is possible to establish the jurisdiction of each individual call."[145] *Third*, we recognize that just because *some provider* can establish the location of a caller (and thus the jurisdiction of a call) does not mean that every inmate calling services provider can or does do so.[146] As such we agree with Pay Tel that, to the extent an inmate calling services provider cannot definitively establish the jurisdiction of a call, it may and should treat the call as jurisdictionally mixed and thus subject to our ancillary service charge rules. Such treatment is necessary to carry out the requirement of the Communications Act that all interstate charges and practices be just

[141] Pay Tel Mar. 20, 2020 Comments at 9-10.

[142] *See, e.g.*, *Vonage Order*, 19 FCC Rcd at 22413, para. 17; *see also Federal-State Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21255, para. 6 (1998) ("In general, the jurisdictional nature of a call depends solely upon where the call originates and where it terminates.").

[143] In other words, certain providers are incorrect to argue that comparing the incarcerated person's local access and transport area and phone number with the account holder's will let an inmate calling services providers identify whether a call or account is interstate or intrastate. Inmate Calling Solutions, LLC, Comments, WC Docket No. 12-375, at 1 (filed Mar. 20, 2020); NCIC Mar. 20, 2020 Comments at 3; *see also* NCIC July 28, 2020 *Ex Parte* at 2-3 (arguing that the jurisdictional nature of a call may be determined based on the billing address of the credit card used to fund an account). Although that may be true for legacy wireline networks, more modern networks such as wireless networks and interconnected VoIP networks allow the portability of such numbers across state lines. And given the prevalence of such networks and the increasing reliance on mobile wireless and VoIP services, it would be unreasonable for an inmate calling services provider to rely on a telephone number alone to determine the location of a particular called party. *See* FCC, Voice Telephone Services as of 12/31/17, Tables: Nationwide and State-Level Data for 2008-present (Aug. 28, 2019), https://www.fcc.gov/voice-telephone-services-report; *see also 2018 Communications Marketplace Report et al.*, GN Docket No. 18-231 et al., Report, 33 FCC Rcd 12558, 12668, para. 203 (2018). Today, a phone number provides little indication of the physical location of a called party or a calling party. Telephone numbers have been readily ported between wireline providers, and between wireline and wireless service providers, since at least 2003. *Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697 (2003). And VoIP providers have been porting numbers since at least 2008. *Telephone Number Requirements for IP-Enabled Services Providers et al.*, WC Docket No. 07-243 et al., Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19566, paras. 79-80 (2007). Thus, a telephone number only identifies the state and rate center where the number was *originally* assigned, and not where it is currently assigned. Number Portability Administration Center, *How LNP Works*, https://www.npac.com/number-portability/how-lnp-works (last visited July 10, 2020). Moreover, because a wireless telephone user may make or receive a call anywhere there is wireless reception, their phone number readily may not indicate their location. And the chance of a phone number being one that is used by a mobile phone is high: The telephone numbers used by mobile phones make up about half of all assigned telephone numbers. FCC, Numbering Resource Utilization in the United States at 10, tbl. 1 (2019), https://docs.fcc.gov/public/attachments/DOC-359118A1.pdf (calculated by dividing Mobile Wireless Assigned Numbers by All Reporting Carriers Assigned Numbers).

[144] Pay Tel Mar. 20, 2020 Comments at 9-10.

[145] Securus Apr. 21, 2020 Reply at 2.

[146] NCIC July 28, 2020 *Ex Parte* at 2-3.

and reasonable. Or to put it another way, any other treatment of jurisdictionally indeterminate calls would strip interstate callers of the protections guaranteed by federal law.

54. GTL and Securus take issue with our jurisdictional approach, arguing that it is inconsistent with Commission and provider practices for determining the jurisdictional nature of calls.[147] These providers misread Commission precedent, however. While the Commission has allowed carriers to use proxies for determining the jurisdictional nature of calls in specific contexts, typically related to carrier-to-carrier matters or payment of fees owed,[148] it has never adopted a general policy allowing the broad use of such proxies outside of specific facts and circumstances which are not applicable here. Indeed, the Commission has never applied proxies to telecommunications resellers generally, or inmate calling services providers specifically, with respect to assessing different interstate and intrastate rates and charges on their customers for those customers' interstate and intrastate telephone calls. Indeed, the examples that GTL and Securus provide relate specifically to carrier-to-carrier arrangements involving intercarrier compensation or applicable federal fees due between carriers and the Commission, not to using a proxy for charging a customer a higher or different rate than it would otherwise be subject to based on whether the customer's call is interstate or intrastate.

55. We are also unpersuaded by the "precedent" cited by GTL and Securus. Much of what those parties cite is drawn from Notices of Proposed Rulemaking.[149] Even insofar as those Notices include observations about historical industry practice as context for those requests for comment, the Notices do not establish actual Commission policy. Nor are we persuaded by their citation of a 2002 Bureau-level order resolving an interconnection arbitration.[150] That Bureau decision involved baseball-style arbitration, and an arbitrator concluded that those parties could use NPA-NXX codes for purposes of

[147] Specifically, GTL asserts that the "traditional 'end-to-end analysis' has long been used by the FCC, the states, and the industry to determine the jurisdictional nature of a call" but that there have also been "numerous instances" in which the Commission has found this analysis difficult to apply and has instead allowed carriers to use jurisdictional proxies, such as NPA-NXX codes. *See* Letter from Chérie R. Kiser and Angela F. Collins, Counsel for Global Tel*Link Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2-5 (filed July 30, 2020) (GTL July 30, 2020 *Ex Parte*). Similarly, Securus states that the Commission has endorsed the use of telephone numbers and Local Routing Numbers for determining the jurisdiction of a call. *See* Letter from Dennis J. Reinhold, Senior Vice President and General Counsel, Securus Technologies LLC, to Marlene Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed July 30, 2020) (Securus July 30, 2020 *Ex Parte*).

[148] *See Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7544-45, paras. 52-53 (2006); *see also* 2020 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), at 40-42.

[149] GTL July 30, 2020 *Ex Parte* at 2-3 nn.10, 12 & 13 (citing *High-Cost Universal Service Support, et al*., WC Docket No. 05-337 *et al.*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6642-43, para. 327 (2008)); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4747, para. 141 (2005); and *Misuse of Internet Protocol (IP) Captioned Telephone Service et al.*, CG Docket Nos. 13-24 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5850-51, para. 108 (2018); *Connect America Fund, et al*., WC Docket No. 10-90 *et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4777-78, para. 684 n.1099 (2011)); Securus July 30, 2020 *Ex Parte* at 2-3 n.3 (same).

[150] GTL July 30, 2020 *Ex Parte* at 3 n.12 (citing *Petition of WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration et al.*, CC Docket Nos. 00-218, 00-249, 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27039, 27181-82, para. 301 (WCB 2002) (*WorldCom Order*)).

determining whether calls were local or toll.[151] That conclusion was a function of the limits of the carriers' respective proposals there—nothing in that case made the use of NPA-NXX codes applicable to the entire industry.[152] Moreover, this 18 year-old decision did not involve carriers terminating calls to VoIP and mobile wireless telephone numbers, which is our concern here.[153] In still other cases, GTL cites state commission decisions or an industry white paper, which likewise do not demonstrate Commission policy.[154] Thus, these filings by GTL and Securus do not demonstrate any actual Commission policy for the industry from which we would be departing here.

56. Independently, the Commission notices and Bureau order cited by GTL and Securus involve materially different policy contexts. In particular, they generally involve scenarios where the Commission is seeking to ensure a reasonable aggregate outcome across a mass of transactions. This is the case under the telecommunications relay service (TRS) program, where a single entity—the Commission—is providing all of the compensation that providers receive from the interstate TRS Fund. To the extent that interstate vs. intrastate distinctions arise in that context, the Commission must ensure a reasonable approach across the aggregation of TRS calls handled by each provider rather than necessarily requiring jurisdictional accuracy on a call-by-call basis. This also is the case with intercarrier compensation, for example, where carriers exchange large volumes of calls and the jurisdictional status of any individual call is less important for intercarrier compensation purposes than ensuring that, in the aggregate, the payments carriers exchange reflect a reasonable accounting of the relative portion of that mass of calls that are interstate vs. intrastate. Furthermore, under the framework of sections 251 and 252 of the Act, Commission rules merely establish a default, with individual carriers free to negotiate alternative approaches.[155] In that context, Congress thus anticipated that regulators generally would defer to industry-derived outcomes where they emerged. The situation here is quite different, however. Currently, charges for inmate calling services calls are imposed on a call-by-call basis. As a result, to ensure the rate caps serve their purpose of ensuring just and reasonable rates for interstate services, those protections must apply on a call-by-call basis. Even assuming *arguendo* that proxies could be identified that would yield an approximately accurate differentiation between interstate and intrastate traffic when viewed across the entire aggregation of a providers' calls, that would be cold comfort to the end-user consumers.[156] Those consumers would lose the protection of our rate caps for particular calls that are, in

[151] *Worldcom Order*, 17 FCC Rcd at 27046, para. 9 (discussing petitions for arbitration filed by AT&T, Cox and WorldCom); *see also id.* at 27181-82, para. 301 (finding that Verizon had not offered a viable alternative to NPA-NXX codes for purposes of determining the jurisdictional nature of the calls in question).

[152] In fact, the Arbitrator expressly cabined her decision by stating that it "will provide a workable framework to guide the commercial relationships *between the interconnecting carriers before us in Virginia*." *Id.* at 27042, para. 1 (emphasis added).

[153] The industry is very different today than it was in 2002 and the rules applicable to numbering resources have changed substantially, calling into question whether that arbitrator would have reached the same conclusion today with respect to reliance on NPA-NXX codes. Indeed, Securus itself acknowledges that "the widespread use of wireless phones has made area codes and NXX prefixes a poor proxy for location." *See* Securus July 30, 2020 *Ex Parte* at 2.

[154] GTL July 30, 2020 *Ex Parte* at 3-4 nn.11, 14.

[155] 47 U.S.C. § 252(a)(1).

[156] Nor, in any case, does the record reveal proxies that would be reasonable even if it made sense to focus on aggregate outcomes. For example, the record does not reveal why proxies or the like that industry might have used in the context of traditional telephone calls would make sense in the inmate calling services context given potential differences in the types of calls that are placed, potential differences in frequency and duration of calls, or other possible considerations. At the same time, relying on proxies such as telephone numbers could be self-defeating, since consumers could purchase wireless phones from a different state (with a number from that state) and then place calls from within the same state as the inmate in order to gain the protections of the interstate inmate calling services rules. Such activities would impose their own costs and could lead to disparate application of the protections of the interstate inmate calling services rules based on the relative sophistication of the particular

(continued….)

fact, interstate calls because per-call regulation turned on proxies developed in the context of aggregations of calls with no guarantee—or necessarily even likelihood—of seeing offsetting benefits in the case of other inmate calling services calls they make or receive. Likewise, when it comes to fees for jurisdictionally mixed ancillary services, we merely seek to vindicate our statutory interests whenever interstate inmate calling services are implicated. Indeed, in the *Vonage Order* cited by GTL,[157] the Commission responded to the difficulty in directly determining the jurisdiction of calls by broadly preempting the state's attempted regulation of the service at issue.[158] Thus, although we leave providers free to follow state law where the associated effects can be limited to intrastate inmate calling services, the record here does not persuade us to neglect our interest when there is an effect on interstate services even if it falls below some (undefined) threshold.

57. Additionally, the end-to-end analysis that we rely upon in this Order is the analysis that the Commission "has traditionally used to the determine whether a call is within its interstate jurisdiction."[159] The Commission has not extended to inmate calling services any of the jurisdictional proxies it has adopted for specific and limited purposes in other contexts, nor has it ever had any reason to suspect that inmate calling services providers were not appropriately complying with this most basic regulatory obligation of telecommunications services providers with respect to their customers—determining the proper jurisdiction of a call when charging its customers the correct and lawful rates for those calls using the end-to-end analysis.[160] We therefore disagree with GTL and Securus that our approach is a departure from established precedent and imposes a "burden" on them.

58. For the same reasons, we also disagree with GTL and Securus that requiring inmate calling services providers to classify incarcerated people's calls as interstate or intrastate based on their end points constitutes a change in Commission policy requiring prior notice and an opportunity to comment.[161] On the contrary, our approach simply clarifies the long-established standard that inmate calling services providers must apply in classifying calls for purposes of charging customers the appropriate rates and charges. And, in any event, the Bureau's public notice seeking to refresh the record on ancillary service charges in light of *GTL v. FCC* sought comment "on how the Commission should proceed in the event any permitted ancillary service is 'jurisdictionally mixed' and cannot be segregated between interstate and intrastate call" and defined jurisdictionally mixed services as "[s]ervices that are capable of communications both between intrastate end points and between interstate end points."[162] Since the permitted ancillary services include single-call services (i.e., services related to a specific call),[163] GTL and Securus received notice of, and a full opportunity to comment on, the jurisdictional status of inmate calling services calls.

(Continued from previous page)
consumers receiving calls from inmates. We find all these concerns persuasive both in connection with our inmate calling services rate caps and in connection with our regulation of fees for ancillary services.

[157] GTL July 30, 2020 *Ex Parte* at 2 n.10 (citing *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22421, para. 26 n.98 (2004) (*Vonage Order*)).

[158] *Vonage Order*, 19 FCC Rcd at 22404-05, para. 1, *aff'd Minn. PUC v. FCC*, 483 F.3d 570 (8th Cir. 2007).

[159] *Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1, 3 (D.C. Cir. 2000); *Vonage Order*, 19 FCC Rcd at 22413, para. 17; *see* Securus July 30, 2020 *Ex Parte* at 2 ("The traditional 'end-to-end analysis' has long been used by the FCC, the states, and the industry to determine the jurisdictional nature of a call.").

[160] *See generally Vonage Order*, 19 FCC Rcd at 22413, para. 17.

[161] GTL July 30, 2020 *Ex Parte* at 4 n.16; Securus July 30, 2020 *Ex Parte* at 2.

[162] *Ancillary Services Refresh Public Notice*, 35 FCC Rcd at 190 (internal quotation marks and citation omitted).

[163] 47 CFR § 64.6000(a)(2).

59. *Ancillary Service Charges Rule Revisions.* We revise our ancillary services charge rules consistent with our findings herein.[164] These amendments reflect the D.C. Circuit's holding that the Commission lacks authority over intrastate inmate calling services as well as our actions exercising our authority to ensure just and reasonable rates under section 201(b) for ancillary services charges for and in connection with jurisdictionally mixed inmate calling services for which it is impossible or impracticable to segregate the interstate and intrastate components.[165]

60. We also change section 64.6020(a)'s cross-reference to section 64.6000 to more precisely cross-reference section 64.6000(a).[166] We find good cause to correct the cross-reference without notice and comment because this change is non-substantive.[167] It is well established that the Commission need not seek comment on amendments to our rules designed "to ensure consistency in terminology and cross references across various rules or to correct inadvertent failures to make conforming changes when prior rule amendments occurred."[168]

B. Mandatory Pass-Through Taxes and Fees

61. As a result of the D.C. Circuit's decision in *Securus*, the rule amendments in the *2016 ICS Reconsideration Order* to include language precluding markups of a "Mandatory Tax or Mandatory Fee" in the absence of specific governmental authorization were vacated to the extent they capped rates. We therefore amend our rules to reinstate the language added in the *2016 ICS Reconsideration Order* in response to the court's vacatur and remand. We also add language clarifying that this rule applies only in connection with interstate and international inmate calls.[169] This amendment will ensure that end users will pay for "the cost of the service they have chosen and any applicable taxes or fees, and nothing more" for inmate calling services subject to our jurisdiction,[170] thereby helping ensure that the charges imposed in connection with those services are just and reasonable.[171]

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[164] Appx. A (Final Rules).

[165] *GTL v. FCC*, 866 F.3d at 415.

[166] *See* 47 CFR § 64.6020(a).

[167] *See Unlicensed Operation in the TV Broadcast Bands*, ET Docket Nos. 04-186, 02-380, Second Memorandum Opinion and Order, 25 FCC Rcd 18661, 18724, para. 154 (2010) (*Unlicensed Operation Order*) (concluding that the correction of an erroneous cross-reference is "not substantive" and that the Commission may make such a change on its own motion without prior notice and comment).

[168] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Order, 33 FCC Rcd 5660, 5688-89, para. 63 (2017) (*Accelerating Wireline Broadband Deployment Order*) (finding notice and comment unnecessary for non-substantive changes to the Commission's rules).

[169] Appx. A.

[170] *2015 ICS Order*, 30 FCC Rcd at 12859, para. 192; *see, e.g.*, *Truth-in-Billing and Billing Format et al*., CC Docket No. 98-1770 et al., Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448, 6460-61, paras. 25-27 (2005) (observing that it is "a misleading practice for carriers to state or imply that a charge is required by the government when it is the carriers' business decision as to whether and how much of such costs they choose to recover directly from consumers through a separate line item charge").

[171] While NCIC urges us in this proceeding to grant its petition for forbearance from universal service contribution obligations, Letter from Lee G. Petro, Counsel for NCIC Inmate Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed July 27, 2020) (NCIC July 27, 2020 *Ex Parte*), we denied that petition in a separate proceeding. *See Petition of Network Communications International Corporation for Forbearance Pursuant to 47 U.S.C. Section 160(c) from Application of Contribution Obligations on Inmate Calling Services; Securus Technologies, LLC, Request for Waiver of Section 54.706*, WC Docket No. 19-232, Order, FCC 20-104 (rel. July 31, 2020).

62. The amendment is consistent with the Commission's prior intent regarding mandatory taxes or fees and the record previously developed in this proceeding.[172] We base our reinstatement on the same record, and find no basis to depart from our prior determination that adopting this rule best comports with our application of section 201(b).[173] Further, this amendment harmonizes the rules regarding a "Mandatory Tax or Mandatory Fee" and an "Authorized Fee" to prohibit markups on either category of charges, thereby eliminating at least some potential confusion from the disparate definitions regarding whether inmate calling services providers may mark up such charges.[174]

C. Revisions to Certain Inmate Calling Services Rules

63. Finally, we revise certain of our rules governing inmate calling services to comport with the D.C. Circuit's decisions in *GTL* and *Securus*.[175] First, the court vacated the rate caps that the Commission adopted in the *2015 ICS Order* and the *2016 ICS Reconsideration Order*,[176] and we thus eliminate section 64.6010, which contained those rate caps.[177] Second, the *GTL* court vacated the reporting requirement the Commission had adopted for video visitation services.[178] We thus eliminate section 64.6060(a)(4), which contained that rule.[179] Third, the *GTL* court found that the Commission lacks ratemaking authority over intrastate inmate calling services rates.[180] We thus revise sections 64.6000(b), 64.6000(n), 64.6030, 64.6050, 64.6070, 64.6080, 64.6090, and 64.6100 to reflect that these rules only apply to interstate and international inmate calling services.[181] Fourth, we revise section 64.6000(t) of our rules to change the reference to "ICS" therein to "Inmate Calling Services."[182]

64. We find good cause to implement these revisions without notice and comment. The Administrative Procedure Act states that notice and comment procedures do not apply "when the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules

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[172] *See 2015 ICS Order*, 30 FCC Rcd at 12859, para. 191 (holding that inmate calling services providers should be "permitted to recover mandatory applicable pass-through taxes and regulatory fees, but without any additional mark-up or fees"); *see 2016 ICS Reconsideration Order*, 31 FCC Rcd at 9317-18, para. 31.

[173] In the absence of any indication of changed circumstances regarding the markup of Mandatory Taxes or Mandatory Fees, we find it unnecessary to seek additional comment on these matters. *See, e.g.*, *Chamber of Commerce v. SEC*, 443 F.3d 890, 900 (D.C. Cir. 2006).

[174] *See* Petition of Michael S. Hamden for Partial Reconsideration, WC Docket No. 12-375, at 15-16 (filed Jan. 19, 2016) (claiming "confusion" regarding the Commission's definitions of the terms "'authorized fee,'" "'mandatory tax,'" and "'mandatory fee'" in the *2015 ICS Order*) (citing Letter from Robert Pickens, President, Securus Technologies, to Clients (Nov. 13, 2015)); Wright Petitioners' Opposition to Petition for Partial Reconsideration, WC Docket No. 12-375, at 4 (filed Mar. 23, 2016); Inmate Calling Solutions, LLC, Opposition to Petition for Partial Reconsideration, WC Docket No. 12-375, at 15 (filed Feb. 26, 2016) ("ICSolutions does not oppose further clarification [of these terms] from the FCC."). *But see* Response of Securus Technologies, Inc., to Petition for Partial Reconsideration of Michael S. Hamden, WC Docket No. 12-375, at 4 (filed Mar. 23, 2016) (arguing these terms were adequately defined); Response of Telmate, LLC, to Petition for Partial Reconsideration, WC Docket No. 12-375, at 5 (filed Mar. 23, 2016).

[175] *See GTL v. FCC*, 866 F.3d 397.

[176] *Id.* at 402; *Securus v. FCC*, 2017 U.S. App. LEXIS 26360, at *1.

[177] 47 CFR § 64.6010.

[178] *GTL v. FCC*, 866 F.3d at 415.

[179] 47 CFR § 64.6060(a)(4).

[180] *GTL v. FCC*, 866 F.3d at 412 (concluding that Commission's "attempted exercise of authority" over intrastate inmate calling services is "beyond the statutory authority of the Commission").

[181] 47 CFR §§ 64.6000(b), (n), 64.6020(a), 64.6030, 64.6050, 64.6070, 64.6080, 64.6090, 64.6100.

[182] 47 CFR § 64.6000(t).

issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[183] With the exception of our change to section 64.6000(t), our revisions are non-discretionary changes to the Commission's rules necessary to effectuate the D.C. Circuit's decisions in *GTL* and *Securus*. Seeking notice and comment before implementing the D.C. Circuit's non-discretionary mandate would serve no purpose because commenters could not say anything during a notice and comment period that would change the D.C. Circuit's decision and the Commission does not have discretion to depart from the court's mandate.[184]

65. We also find good cause to revise section 64.6000(t) without notice and comment because this change is non-substantive.[185] The Commission need not seek comment on amendments to our rules designed "to ensure consistency in terminology and cross references across various rules or to correct inadvertent failures to make conforming changes when prior rule amendments occurred."[186]

IV. FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING

66. As a result of the D.C. Circuit's decisions in *GTL* and *Securus*, the interim interstate rate caps that the Commission adopted in the *2013 ICS Order*—$0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls—remain in effect today. Based on extensive analysis by Commission staff of the most recent cost data submitted by inmate calling services providers, we propose comprehensive rate reform of the inmate calling services within our jurisdiction.

67. *First*, we propose to lower our rate caps for interstate inmate calling services to $0.14 per minute for debit, prepaid, and collect calls from prisons and $0.16 per minute for debit, prepaid, and collect from jails. In so doing, we account for reasonable correctional facility costs, consistent with the court's opinion in *GTL*, and we account for the fair compensation mandate of section 276 of the Act. We further propose to find that the benefits of our interstate rate cap proposal far exceed the costs.

68. *Second*, we propose to cap rates for international inmate calling services, which remain uncapped today. Specifically, we propose to adopt a rate cap formula that permits a provider to charge an international inmate calling services rate up to the sum of the provider's per-minute interstate rate cap for that correctional facility *plus* the amount that the provider must pay its underlying international service provider for that call on a per-minute basis. We believe these proposals will ensure that the rates that incarcerated individuals and their loved ones pay for interstate and international inmate calling services are just and reasonable as required by section 201(b) of the Act.

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[183] *See* 5 U.S.C. § 553(b)(3)(B); *see also EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 134 (D.C. Cir. 2015) (*EME v. EPA*) (affirming agency good cause that notice and comment were unnecessary when a court order invalidated a rule and "commentators could not have said anything during a notice and comment period that would have changed that fact"); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Order, 34 FCC Rcd 9366, para. 2 (WTB 2019) ("The Bureau finds that notice and comment are unnecessary for these rule amendments under 5 U.S.C. § 553(b), because this ministerial order merely implements the mandate of the United States Court of Appeals for the District of Columbia Circuit, and the Commission lacks discretion to depart from this mandate."); *2014 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Communications Act*, MB Docket No. 14-50 et al., Order, 34 FCC Rcd 12360, 12361, para. 2 (MB 2019) (finding notice and comment unnecessary when amending rules pursuant to a court order).

[184] *See EME v. EPA*, 795 F.3d at 134; *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Order, 34 FCC Rcd 9366, 9366, para. 2 (WTB 2019).

[185] *See Unlicensed Operation Order*, 25 FCC Rcd at 18724, para. 154 (concluding that the correction of an erroneous cross-reference is "not substantive" and that the Commission may make such a change on its own motion without prior notice and comment).

[186] *Accelerating Wireline Broadband Deployment Order*, 33 FCC Rcd at 5688-89, para. 63 (finding notice and comment unnecessary for non-substantive changes to the Commission's rules).

69. We seek comment on our proposals, including their impact on small businesses, and we seek comment on any alternative proposals.

A. Proposing New Interstate Rate Caps

70. We propose to adopt permanent rate caps for interstate inmate calling services of $0.14 per minute for debit, prepaid, and collect calls from prisons and $0.16 per minute for such calls from jails. These rate caps would apply to all calls that a provider identifies as interstate and to calls that the provider cannot definitively identify as intrastate.

71. The proposed rates are based on our analyses of detailed cost data submitted by inmate calling services providers in their Second Mandatory Data Collection responses. These data demonstrate that the proposed rates, in conjunction with the fees permitted for ancillary services, will generally allow providers to recover their costs, including their overheads, and reimburse correctional facilities for any costs that they incur that are directly related to the provision of inmate calling services.[187] We establish our proposed rate caps based on (1) our calculated mean contract costs per paid minute to provide inmate calling services as reported by providers plus one standard deviation; and (2) an allowance for recovery of correctional facility costs directly related to the provision of inmate calling services observed in that data.[188] Our proposed rate cap methodology and its impact on providers' ability to recover their costs differ materially from the methodology and impact that were before the D.C. Circuit in *GTL v. FCC.* We seek comment on each aspect of our proposed rate cap methodology and on whether it will result in interstate inmate calling services rates that are just and reasonable as required by the Communications Act.

72. *Uniform Caps for Prepaid/Debit and Collection Calls*. We propose to adopt identical interstate rate caps for prepaid/debit and collect calls based on the absence of any data demonstrating a material difference in the costs of providing these different types of calls.[189] What is more, collect calling is no longer a popular method of inmate calling, and data show that the number of collect calls is small and has been declining relative to prepaid or debit calls.[190] We seek comment on current trends for collect calling, and on our proposal to adopt a single rate cap for prepaid/debit and collect calls made from the same facilities and on the overall data upon which we base our proposal. Are there cost differences between collect and prepaid/debit calls that providers failed to identify in response to our data collection? If so, commenters should submit additional data on this point into the record. We also seek comment on whether attempting to distinguish between the costs of providing prepaid/debit calls and collect calls is necessary (or administratively efficient) given that collect calls appear to be a disappearing service.

73. We do note one apparent difference between collect and prepaid/debit calls: Specifically, collect calls are more likely to be initiated through the use of a live operator. We tentatively do not

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[187] We define "overheads" as the difference between the costs inmate calling services providers assigned to their contracts and their total inmate calling services costs.

[188] *See GTL v. FCC*, 866 F.3d at 414. "Contract costs per paid minute" refers to the sum of a contract's direct costs and allocated overheads divided by the number of paid minutes of use reported for that contract. We calculate the mean of this value across all contracts for each facility type and use those averages in determining our proposed rate caps.

[189] *2015 ICS Order*, 30 FCC Rcd at 12805-07, paras. 86-90. For convenience, we refer herein to prepaid and debit calls collectively as prepaid/debit calls. While each of these call types is separately defined in the Commission's rules, 47 CFR § 64.6000(g), (p), each involves a form of advanced payment for inmate telephone calls as distinguished from collect calls for which payment is sought from the called party at the time that the inmate call is placed. 47 CFR § 64.6000(d). *See also* Public Interest Advocates July 29, 2020 *Ex Parte* at 3 ("support[ing] the FCC's proposals to eliminate higher rates for collect calling as compared to debit calling").

[190] In 2014, collect call minutes represented 4.9% of all paid call minutes. In 2018, the share of collect calls in all paid call minutes had fallen to 2.2%. These findings are based on staff analysis of the data received in the Second Mandatory Data Collection.

believe, however, that this difference merits different rates because inmate calling service providers are already permitted to charge a separate fee if an incarcerated individual makes use of a live operator to place an interstate collect call.[191] This additional ancillary service charge is on top of the per-minute rate for the interstate collect call.[192] Are there nevertheless reasons to maintain different interstate rate caps for collect versus prepaid/debit calling? If so, commenters should explain these reasons in detail.

74. *Different Caps for Prisons and Jails*. We propose to distinguish between two distinct facility types, proposing a rate cap for jails that is $0.02 per minute higher than the rate cap we propose for prisons. This $0.02 per-minute differential reflects our analysis of the cost data, which shows greater variations from mean costs for jails than prisons (and therefore a greater standard deviation from the mean for jail than prisons). This two-tier rate structure departs from the four-tier rate structure the Commission adopted in the *2015 ICS Order*, which established a rate cap for prisons as well as three different rate caps for jails, based on the jails' average daily populations.[193] As discussed in greater detail in Appendix F, staff analysis of the data submitted by the providers indicates that the average daily population for jails does not meaningfully influence per-minute costs.[194] The analysis similarly indicates that per-minute costs are not materially influenced by other characteristics of the facilities being examined. We seek comment on this analysis.

75. We seek comment on our proposal to adopt a single rate cap for prisons and a single rate cap for jails. Are there differences in the costs of serving different types of prisons or jails that are not apparent from the data submitted in response to the Second Mandatory Data Collection? If so, commenters should provide additional analysis or data establishing those differences and explain how we should take them into account in setting interstate rate caps for different types of facilities.

76. *Cost Recovery at the Contract Level*. The Second Mandatory Data Collection responses make clear that inmate calling services providers seek to recover their costs at the contract, rather than facility, level. The providers therefore do not typically keep, and have not submitted, data that would capture cost differences among facilities of differing sizes under the same contract. In these circumstances, we propose to set interstate rate caps based on our analysis of costs at the contract level. We invite comment on this approach.

77. *Effective Date for New Interstate Rate Caps*. We propose that our new rate caps take effect 90 days after notice of them is published in the Federal Register. This is the same transition timeframe that the Commission adopted when providers first became subject to the current interim caps, and the record in this proceeding indicates that implementation occurred without difficulty.[195] We seek comment on this view and on our proposal. Any commenter favoring a shorter or longer transition period should provide a detailed explanation of precisely what steps providers and correctional facilities must take before they can implement new rate caps for interstate inmate calling services and how much time they anticipate it will take to accomplish each of those steps.

1. Methodology

78. *Calculating Mean Contract Costs per Paid Minute*. Our rate cap methodology begins with the calculation of mean contract costs per paid minute in the provision of inmate calling services. This calculation is based on data for the most recent year (2018) submitted in providers' Second

[191] *See* 47 CFR § 64.6020(b)(3).

[192] *2015 ICS Order*, 30 FCC Rcd at 12848, para. 168.

[193] *Id.* at 12785-86, paras. 44-46; *see also* Public Interest Advocates July 29, 2020 *Ex Parte* at 3-4 (expressing support for the Commission's proposal to adopt a smaller rate differential between prisons and jails).

[194] *See generally* Appx. F (discussing the Lasso analysis results).

[195] *2015 ICS Order*, 30 FCC Rcd at 12884, para. 251 ("The record does not indicate that providers experienced difficulties implementing the rate caps within 90 days after the *2013 Order*'s publication in the Federal Register.").

Mandatory Data Collection responses, as supplemented and clarified in the record via follow-up discussions with each provider.[196] Although we requested data for each facility a provider serves, including information such as the average daily inmate population, the number of calls annually, the number of annual call minutes, and the cost of serving that facility,[197] in many instances providers reported data only at the contract level.[198] The cost data include both (1) costs that may be directly attributed to the provider's inmate calling services operations and, in many instances, to a given inmate calling services contract; and (2) costs, such as general corporate overheads, that cannot be directly attributed to a particular facility or even, in some cases, a particular line of business.[199]

79. The collected data are subject to certain limitations based on differences in recordkeeping practices among the respondent providers. For example, many providers assess their inmate calling services operations on a contract-by-contract basis, although many contracts include multiple correctional facilities.[200] These providers therefore reported information—and we analyze that information—on a contract, rather than a facility, basis.[201] We seek comment on this approach, in the absence of information provided about the costs incurred on a facility-by-facility basis.

80. The Second Mandatory Data Collection sought information about costs in several steps. A filer must first identify which of its and its corporate affiliates' total costs are directly attributable to inmate calling services and which are directly attributable to other operations. The filer must then allocate the remainder of the inmate calling services provider's and its affiliates' total costs (i.e., the costs identified as indirect costs or overhead) between inmate calling services and the affiliate groups' other operations. The filer may then choose to allocate some or all of these costs to its particular inmate calling services contracts or even to a given facility. We note that some providers interpreted different steps in different ways. We seek comment on each aspect of the submitted data and invite parties to submit their own analyses consistent with the terms of the *Protective Order* in this proceeding.[202] Are there other issues regarding the data that we should consider? Are there other types of data we could seek to more

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[196] *Id.* at 12862, para. 198; *2019 Data Collection Public Notice*, 34 FCC Rcd at 515. While the Second Mandatory Data Collection collected data for 2014 to 2018, we rely on data from 2018 because it is likely to be most representative of the current situation. *E.g.*, Letter from Sharon R. Warren, Consultant to Network Communications International Corp (NCIC), Inteserra Consulting Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed May 5, 2020) (amending NCIC's Second Mandatory Data Collection response in response to questions from Commission staff); Letter from Marcus W. Trathen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed Apr. 28, 2020) (amending Pay Tel's Second Mandatory Data Collection response in response to questions from Commission staff); Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed July 22, 2019) (amending Securus' Second Mandatory Data Collection response in response to a request from the Commission staff).

[197] *See* Inmate Calling Services Mandatory Data Collection, WC Docket No. 12-375, General Instructions, at 7-11, https://docs.fcc.gov/public/attachments/DOC-343708A3.docx (Second Mandatory Data Collection Instructions).

[198] *See generally* Appx. E (describing the Commission staff's data processing steps).

[199] *See* Second Mandatory Data Collection Instructions at 3; Appx. E (describing the collected information in greater detail and summarizing several statistical attributes in Table 1).

[200] *See, e.g.*, Description and Justification for CenturyLink Public Communications, Inc.'s Mandatory Data Collection Report (Redacted for Public Inspection) at 3 (filed Mar. 1, 2019) (CenturyLink Description & Justification) ("[T]he company's contract with the Texas Department of Criminal Justice, for example, covers more than 100 facilities."). Based on staff analysis of the data, CenturyLink treated the Wisconsin DOC contract similarly, and GTL treated many, and perhaps all, of its multifacility contracts similarly.

[201] *See, e.g.*, CenturyLink Description & Justification at 3.

[202] *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, 28 FCC Rcd 16954 (WCB 2013) (*ICS Protective Order*) (setting forth the procedure by which "Outside Counsel" and "Outside Consultant[s]" may obtain access to highly confidential data).

fully capture industry costs beyond the detailed and comprehensive data we have already collected and which providers claim reflects the level of granular cost data they keep? We invite parties to submit alternative proposals for us to consider in further evaluating the Second Mandatory Data Collection responses. To the extent that commenters believe we should collect additional data, we seek comment on the likelihood that inmate calling services providers would be able to provide the requested data, and, if so, at what cost and in what timeframe.

81. The Second Mandatory Data Collection did not require providers to allocate costs that are not directly associated with a specific contract among their different contracts. We therefore need to perform such an allocation. We propose to use the reported minutes of use associated with each contract to perform that allocation.[203] We seek comment on this allocation method, including whether reported minutes of use provides a reasonable allocator. Would a different allocator better capture how costs are caused, and if so, why? Are there systematic differences in costs or systematic differences in the way costs are calculated that we should consider in our analysis?

82. In developing its Second Mandatory Data Collection response, one provider, GTL, allocated indirect costs between its inmate calling services operations and its other operations based on the percentages of total company revenue each operation generated. GTL and certain other providers also used relative revenues to allocate their indirect costs among contracts. The Commission has long disclaimed this allocation methodology because it fails to provide a reliable method for determining the costs of providing inmate calling services given that "revenues measure only the ability of an activity to bear costs, and not the amount of resources used by the activity."[204] One way of viewing the problem of using revenues as a cost allocation key is to consider two identical services that have different prices. A revenue cost allocation key would allocate costs to the two services differently even though, by definition, they have the exact same costs.[205] A related problem is that using revenues to allocate costs is somewhat circular—because the whole point of allocating costs is to help determine what revenues need to be to cover those costs. Thus, a revenue-based allocator tends to "lock in" the historical pricing decisions of providers rather than drive rates toward actual costs. We instead considered several other means of allocating costs: call minutes, call numbers, contracts, and facilities, and determined call minutes to be the most reasonable.[206] We invite comment on these observations and this allocator, and ask parties to suggest alternative ways to more appropriately allocate costs for rate-making purposes that would provide more reliable results.

83. *Calculating Interstate Rate Caps for Prisons and Jails.* We next calculate proposed interstate rate caps for both prisons and jails. Those proposed caps equal the mean contract costs per minute for all reporting providers, plus one standard deviation, plus an additional $0.02 for correctional

[203] *See* Appx. E (explaining our allocation method in greater detail, and explaining the shortcoming of alternative allocation methods).

[204] *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities*, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298, 1318, para. 160 (1987) (*Joint Cost Order*) (internal quotation marks omitted).

[205] Consider allocating costs between the interstate and intrastate jurisdiction based on revenues. The record shows no reason to think that intrastate costs should be any higher than interstate costs. However, because intrastate calls have higher prices and earn higher revenues per minute, such a mechanism would imply intrastate costs are significantly higher than interstate costs. *See generally* Appx. E (explaining why a profit-based allocation will not effectively constrain prices); *see also, e.g.*, Securus Annual Report (Tab II. ICS Rates - Domestic, Row 91 and Tab II(a). Narrative - New, Row 97) (reporting, for example, the first-minute intrastate rate of $5.341 and the additional per-minute intrastate rate of $1.391 in Arkansas while reporting the per-minute interstate rate of $0.21 for the same facility); Legacy Annual Report (Tab Section II - Redacted, Row 86 and Tab Section II(a) - Redacted, Row 246) (reporting, for example, the first-minute intrastate rate of $6.50 and the additional per-minute intrastate rate of $1.25 in Michigan while reporting the per-minute interstate rate of $0.25 for the same facility).

[206] *See* Appx. E at 66-70.

facility costs.[207] Our calculations use total industry costs, both interstate and intrastate, because the available data do not suggest that there are any differences between the costs of providing interstate and intrastate inmate calling services. Nor do such data suggest a method for separating reported costs between the intrastate and interstate jurisdictions that might capture such differences, if any. Finally, providers do not assert any such differences. We seek comment on these views.

84. Our analysis of the cost data shows greater variations from mean costs for jails than for prisons, and our proposed rate caps reflect these standard deviations. We examined whether various characteristics, such as location or size, would reveal additional, meaningful differences in costs that would justify separate rate caps for different groups of contracts. We found the main predictors of both costs per minute and high-cost contracts were the provider's identity and the state where the facilities subject to a particular contract are located. We also found that facility type (whether the contracts covered prisons or jails) was a less strong predictor of costs per minute and high-cost contracts. By contrast, other variables such as facility size (measured by average daily population) and rurality, or combinations of such variables provided negligible predictive value.[208] We seek comment on this analysis and on whether we nevertheless should set interstate rate caps on a more granular basis. We invite parties to suggest alternative approaches. Any commenter proposing an alternative approach should submit an explanation of how the data support such an approach, as well as a discussion of the administrative feasibility of the proposed alternative.

85. We believe our proposed rate caps will permit cost recovery for interstate inmate calling services and we seek comment on this view. We specifically invite comment on whether our proposed interstate rate caps would allow providers to recover their costs of providing interstate inmate calling services, including their direct costs of providing interstate inmate calling services under each of their contracts and correctional facility costs directly related to the provision of inmate calling services, while making reasonable contributions to providers' indirect costs that are associated with inmate calling services.

86. Our calculations show a limited number of contracts where providers' reported costs plus our allocation of overhead exceed the revenues that the proposed interstate rate caps would generate: specifically, in only two out of 131 prison contracts, and 114 out of 2,804 jail contracts.[209] If revenues that are currently generated from certain ancillary services, such as automated payment fees and paper billing and statement fees, are included, only 42 jail contracts fail to recover costs under our allocation of overheads. Over half of these 42 jail contracts belong to a single provider, but account for a small portion of that provider's broad contract portfolio.[210] In addition, we do not include revenues earned from live operator fees because those data were not collected, even though the costs of live operators were collected and are included in our analysis. We seek comment on this approach and on whether we should exclude both the costs of, and revenues from, live operator interactions from our analysis.

87. In *GTL v. FCC*, the Court found the Commission's reliance on industry average costs unreasonable because even if any cost component of site commissions were disregarded, the proposed caps were "below average costs documented by numerous ICS providers and would deny cost recovery

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[207] Part IV.A.3, below, explains the basis for this $0.02 allowance and how we calculated it based on the data.

[208] *See generally* Appx. F (describing the Lasso analysis).

[209] We note that the inmate calling services providers' reported costs exclude site commission payments, although they do report information on site commission payments. The Commission has determined previously that some portion of these site commission payments do reflect legitimate costs that correctional facilities incur that are reasonably related to the provision of inmate calling services. Based on our analysis, our proposed rate caps include a $0.02 per minute allowance for these correctional facility costs.

[210] Based on staff analysis of these 42 jail contracts, approximately {[ ]}. Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

for a substantial percentage of all inmate calls."[211] Unlike that result, however, we propose a methodology that begins with an industry mean cost, increases that mean by a standard deviation, and then adds an additional amount—$0.02 per minute—to account for correctional facility costs. The revenues from the proposed rate caps would enable the vast majority of providers to recover at least their reported costs, leaving only 1.5% (or 42/2,804) of all jail contracts with reported average costs above what the proposed interstate rate caps would recover (and we seek comment below on potentially waiving our caps in these extraordinary cases).

88. As discussed in Appendix E, we assigned costs to contracts based on relative minutes of use. For robustness, we also take the data at face value and analyze our proposed caps against those data. In that scenario, only one prison contract and 32 jail contracts would fail to recover reported direct costs based on our analysis. And only one prison contract or 0.8% (1/131) of prison contracts and 21 or 0.7% (21/2,804) of jail contracts would fail to recover their reported direct costs after accounting for certain ancillary service fees. We seek comment on this analysis. We also ask whether it would be appropriate to set rates based on the costs of the vast majority of providers (for example, all but the one or two providers with the highest average costs per minute), in order to incent providers with above average costs to be more efficient.[212]

89. The presence of a number of prisons and jails with rates below our proposed interstate rate caps is further evidence that leads us to conclude that our proposed caps will broadly allow cost recovery. We have identified nearly 800 prisons in 35 states that have set their interstate debit, prepaid, and collect inmate calling service rates at levels below our proposed cap of $0.14. These include prisons in locations as diverse as Alabama, California, New Jersey, New Mexico, West Virginia, and Wyoming. Similarly, nearly 200 jails in 35 states set all of their interstate debit, prepaid, and collect inmate calling service rates at levels below our proposed caps.[213] Confirming our analysis of the cost data, facility size also does not seem to matter in these cases. We seek comment on whether these data suggest that our proposed interstate rate caps should be lowered even further notwithstanding the fact that our proposed rates reflect what the providers have most recently reported as their inmate calling services costs. Is this evidence that some providers have indeed reported costs in excess of their actual costs?

90. We note that our rate cap calculations do not account for revenues earned from certain ancillary services, even though the costs of these services, which were not independently collected, are included in reported inmate calling services costs. We invite comment on whether we should adjust the

[211] *GTL v. FCC*, 866 F.3d at 414.

[212] *See, e.g.*, *Sw. Bell Tel. Co. v. FCC*, 168 F.3d 1344, 1352 (D.C. Cir. 1999) ("The use of industry-wide averages in setting rates is not novel. Indeed, the Supreme Court has affirmed ratemaking methodologies employing composite industry data or other averaging methods on more than one occasion."); *Price Cap Performance Review for Local Exchange Carriers*, WC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961, 9002, para. 91 (1995) ("Both economic theory and our own experience support the views of many commenters in this docket that these purposes [of rate setting] generally are best accomplished by actual competition or, where this does not exist or is not fully effective, by policies that replicate the effects of competition to the extent possible. Effective competition encourages firms to improve their productivity and introduce improved products and services, in order to increase their profits. With prices set by marketplace forces, the more efficient firms will earn above-average profits, while less efficient firms will earn lower profits, or cease operating. Over time, the benefits of competition flow to customers and to society, in the form of prices that reflect costs, maximize social welfare, and efficiently allocate resources."). While the court in *GTL* rejected an efficiency argument advanced by the Commission, its concern in that case was that the "average rates" relied on cost data from firms representing only a small fraction of the industry and were not sufficiently supported by the record. *See GTL*, 866 F.3d at 415. The approach we propose here, however, is based on the costs of a majority of providers and is consistent with the record.

[213] *See, e.g.*, Global Tel*Link Corporation Annual Report and Certification, WC Docket No. 12-375 (filed Apr. 1, 2020) (GTL Annual Report) (Tab II. ICS Rate, showing $0.04 per-minute interstate rate for Franklin County Corrections, Ohio); Securus Annual Report (Tab II. ICS Rates – Domestic, showing $0.02 per-minute interstate rate for Travis County Correctional Complex, Texas).

proposed interstate rate caps to address ancillary services. For example, should we exclude the costs from these services from our calculations? We note that while revenues from such services are small or do not exist for many contracts, in other cases, they are significant. For example, the contract mean of automated payment and paper bill/statement revenues per paid minute of use is approximately $0.05.[214] We seek comment on how we should take these revenue sources into account in setting interstate rate caps. Should we reduce our proposed interstate caps by $0.05 across the board or would this distort providers' pricing decisions, especially in the case of contracts where automated payment and paper bill/statement fees are small or zero? Should we instead impose an interstate revenue cap and let providers decide how to raise those revenues? Or would that type of discretion lead to rates that are hard to police in practice? What alternative mechanisms could be applied to ensure that a provider's total revenue from interstate inmate calling services and related ancillary services allows the provider an opportunity to recover its costs of providing those services without subjecting incarcerated people and those they call to unreasonably high interstate rates?

91. We also ask whether there is any other source of revenue from inmate calling services that we should consider in our analysis. For example, in the *2015 ICS Further Notice*, the Commission expressed concern regarding alleged revenue sharing arrangements between inmate calling services providers and financial companies.[215] Some commenters argue that certain inmate calling services providers have entered into revenue-sharing arrangements with third-party processing companies such as Western Union and MoneyGram[216] where a third-party processing company shares its revenues generated from processing transactions for an inmate calling services provider' customers.[217] Commenters further argue that the shared revenue is an additional source of profits for these inmate calling services providers.[218] One commenter suggests that certain providers have effectively created a third-party entity with whom those providers share revenue that is passed through to consumers in the form of a third-party fee for single-call services.[219] Marking up third-party fees, whether directly or indirectly, is prohibited under our rules.[220] We seek any evidence that providers are using kickbacks or other means to indirectly

[214] This is calculated by taking the mean of the quotient of revenues from automated payment and paper bill and statement fees and paid minutes of use for each contract.

[215] *2015 ICS Further Notice*, 30 FCC Rcd at 12914-15, paras. 324-26.

[216] In contrast to typical third-party processing companies such as Western Union and MoneyGram, Pay Tel argues that affiliates of an inmate calling services provider should not be treated as third parties in applying the Commission rules as the affiliated processing company's revenues will end up in the same bucket as the affiliated inmate calling services provider's revenues. Pay Tel Communications, Inc., Comments, WC Docket No. 12-375, at 16 (filed Jan. 19, 2016) (Pay Tel Jan. 19, 2016 Comments); *see also* CenturyLink Public Communications, Inc., Comments, WC Docket No. 12-375, at 12-13 (filed Jan. 19, 2016) (CenturyLink Jan. 19, 2016 Comments) (arguing that "[i]f an ICS provider has a financial interest in a payment firm, such as a full or partial ownership interest, revenue-sharing agreement, or the like, the ICS provider should not be able to pass through any charge from that firm if that charge exceeds the caps").

[217] Pay Tel Jan. 19, 2016 Comments at 16; Prison Policy Initiative Comments at 2-4 (filed Jan. 19, 2016) (providing examples in which inmate calling services providers acknowledge the existing revenue-sharing scheme); Human Rights Defense Center Comments, WC Docket No. 12-375, at 10 (filed Jan. 19, 2016) (agreeing with the comment submitted by the Prison Policy Initiative).

[218] *See, e.g.*, Wright Petitioners et al. Comments, WC Docket No. 12-375, at 20-22 (filed Jan. 19, 2016) (arguing that the revenue-sharing of ancillary fees inflates the profits of inmate calling services providers); Pay Tel Jan. 19, 2016 Comments at 16; NCIC July 28, 2020 *Ex Parte* at 2 (contending that certain licensor-licensee relationships may allow inmate calling services providers to retain a majority of third-party transaction fees).

[219] *See* NCIC July 28, 2020 *Ex Parte* at 2.

[220] *See* 47 CFR § 64.6020(b)(2) (limiting third-party financial transaction fees to "the exact transaction fee charged by the third-party provider, *with no markup*, plus the adopted, per-minute rate) (emphasis added). CenturyLink argues that our rule already prohibits any types of markups that would result in higher charges to a consumer

(continued….)

mark up such fees. What is the best way for us to detect these types of practices? Should we, for example, require providers to include in their Annual Reports detailed information on all sources of revenue in connection with their inmate calling services operations and, if so, what specific additional data should we require providers to submit? We also invite comment on how we should account for any revenue that providers receive from such arrangements in our rate cap calculations. For example, should we reduce the amount that a provider may recover through per-minute rates and ancillary fees by the amount it receives from sharing arrangements with third parties? We seek comment on any additional modifications to the language in our current ancillary services rules that may be necessary to clarify what providers are permitted and not permitted to do with respect to ancillary services charges.

2. Necessary Adjustments to Data

92. The interstate rate caps we propose reflect certain adjustments to some provider data to correct for anomalies that would improperly skew our results and lead to unreasonably high interstate rate caps vis-à-vis rate caps that approximate the true costs of providing inmate calling service. We seek comment on these adjustments. Specifically, to calculate the return component of its costs, GTL uses what it refers to as the "invested capital of GTL."[221] That value equals the amount GTL's current owners paid in 2011 to purchase the company from its prior owners plus the amounts GTL paid for subsequent acquisitions.[222] Those amounts as a matter of basic financial theory reflect GTL's estimate of the future profit streams the company would generate as an ongoing concern in the provision of inmate calling services and the other services GTL provides incarcerated people. Consequently, these prices include any expected market rents embodied in those profit streams.[223] Use of GTL's invested capital as a basis for a regulated cost-based rate is inconsistent with the well-established principle that the purchase prices of companies that possess market power "are not a reliable or reasonable basis for ratemaking."[224]

93. We propose to reduce the costs reported by GTL by 10% in order to reduce or eliminate the distortion caused by our estimate of the market rents reflected in its reported costs and to use those reduced costs in calculating our interstate rate caps for inmate calling services. We adjust our proposed

(Continued from previous page)
regardless of whether the driving force for the higher charge is an explicit fee on top or a revenue-sharing arrangement. CenturyLink Jan. 19, 2016 Comments at 12-13 ("Simply put, if an arrangement between an ICS provider and a third party results in a higher cost to an end-user than would otherwise be charged by that third party directly (a 'base' cost), a markup has occurred. In other words, there is a markup regardless of whether it is the result of an explicit fee on top of the base cost, or whether a revenue-sharing agreement drives the cost above this base cost. The *Second Report and Order* appropriately should be interpreted to prohibit both of these types of markups.").

[221] *See* Letter from Chérie R. Kiser, Counsel to GTL, Cahill Gordon & Reindel LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 10 (filed May 19, 2020) (GTL Amended & Restated Description & Justification) (asserting that GTL relies upon the "invested capital of GTL," which equals the amount GTL's current owners paid in 2011 to purchase the company from its prior owners plus the amounts GTL paid for subsequent acquisitions); *see also* Appx. G.

[222] GTL Amended & Restated Description & Justification at 10. In December 2011, American Securities purchased GTL from Goldman Sachs Capital Partners and Veritas Capital Fund Management LLC for $1 billion, including a $50 million contingencies bonus. That purchase price significantly exceeded the $345 million that Goldman Sachs and Veritas had paid to purchase GTL in February 2011. Ryan Dezember & Gillian Tan, *American Securities Puts Prison-Phone Operator GTL on Block* (Apr. 17, 2014), https://www.wsj.com/articles/american-securities-puts-prison-phone-operator-gtl-on-block-1397761278.

[223] "Market rents" refers to the stream of profits that a company expects to earn that it would not otherwise earn if faced with effective competitive market constraints.

[224] *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation*, CS Docket No. 94-28, Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking, 11 FCC Rcd 2220, 2244, para. 52 (1996); *see, e.g.*, *Illinois Bell Tel. Co. v. FCC*, 911 F.2d 776 (D.C. Cir. 1990).

interstate rate caps to reflect our reasoned estimate of the market rents captured in GTL's reported costs. As explained more fully in Appendix G, we estimate those market rents by analyzing GTL's goodwill, as reported on its balance sheet. GTL's goodwill reflects the unamortized portion of excess purchase price and, presumably, market rents. This excess purchase price includes the value remaining after accounting for fair market values for tangible and intangible assets (excluding goodwill) and liabilities at the time of acquisition. We compute the share of GTL's net assets that its goodwill represents, and then further reduce this computed share to represent only the portion that corresponds with capital costs.[225] We invite comment on this approach. Do commenters believe it overstates, or understates, the market rents included in GTL's cost calculations? Would another adjustment method yield more accurate results? Would it be better to refrain from any adjustment to account for this apparent overstatement of GTL's costs? If so, why?

94. We recognize that additional measures may be needed to eliminate what appear to be other significant overstatements in the inmate calling services costs reported by GTL. Indeed, our analysis of the cost data from all providers makes clear that GTL's reported costs are likely significantly overstated—both vis-à-vis other providers and in absolute terms. First, our analysis shows that GTL's reported costs are substantially greater than the industry average, an anomalous result given that we would expect GTL—as the largest provider in the inmate calling services market—to benefit from economies of scale and scope.[226] GTL's reported share of the total costs reported by all providers of inmate calling services is roughly 1.5 times greater than its reported share of the industry's minutes of use.[227] Indeed, GTL's per paid minute contract costs are higher than those of all but two of the other providers. This data is difficult to reconcile with GTL's scale and scope, and apparent efficiency, which suggest that GTL's per-minute costs should be lower than other provider's costs.[228] Second, even after a 10% reduction, GTL is still an outlier among the larger providers, having a materially higher share of

[225] *See generally* Appx. G (explaining the computations performed).

[226] *See generally* Appx. E (illustrating that GTL has a {[

]}. We note that ICSolutions and CenturyLink have just filed section 214 transfer of control applications with the Commission whereby ICSolutions would acquire control of all of CenturyLink's inmate calling services business, except for the Texas Department of Corrections contract which CenturyLink subcontracts with Securus. *See Applications Filed for the Transfer of Control of CenturyLink Public Communications, Inc., to Inmate Calling Solutions, LLC d/b/a ICSolutions*, WC Docket No. 20-150, Public Notice, DA 20-673 (June 25, 2020).

[227] {[

]} Securus and ICSolutions are GTL's nearest peers, yet GTL's per paid minute contract costs are {[ ]}. *See generally* Appx. E.

[228] Scale economies arise when certain upfront costs, such as inmate calling services platform costs, can be shared over increasing volumes of service. Consistent with this, GTL, in its 2018 Description and Justification, reports {[ ]}% of its assets to be intellectual property. GTEL Holdings, Inc., and Subsidiaries Consolidated Financial Statements for 2017-18, at 2, 14 (filed May 19, 2020). The costs of developing and maintaining such assets are generally not related to extension of supply of call minutes, and so as call minutes increase, the per minute share of these costs decline. Economies of scope arise when certain upfront costs, such as a payment platform, can be shared over increasing numbers of services, such as inmate calling services, commissary services, and tablet access and Internet access. This again applies to GTL. While GTL may not face full competitive pressure when it bids to supply inmate calling services, it is the largest provider in the industry. This suggests it is a reasonably effective competitor, which in turn suggests it is not a high cost provider, and therefore, its reported costs are likely significantly overstated.

reported costs than minutes and with reported costs still substantially above the industry average.[229] Third, the highest per minute rates charged on many, including some large GTL contracts, are materially less than our estimate of the contract's per paid minute costs.[230]

95. While some of this imbalance stems from GTL's inflated asset valuations, other aspects of GTL's Second Mandatory Data Collection response suggest that the company's costing methodology systematically overstated its inmate calling services costs. For example, the Second Mandatory Data Collection required all providers to identify their direct costs (i.e., those costs that are completely attributable to a specific service, such as inmate calling services).[231] GTL ignored this instruction and instead identified as direct inmate calling services costs only those costs "that could be directly attributable to a particular correctional facility contract."[232] This failure to comply with the instructions resulted in GTL incorrectly reporting as *indirect* inmate calling services costs its "expenses for originating, switching, transporting, and terminating ICS calls" and "costs associated with security features relating to the provision of ICS," among other costs that appear to be completely attributable to and thus properly identifiable as direct costs of inmate calling services.[233] The net result of this failure is that GTL's only reported direct inmate calling services cost is its "bad debt expense."[234]

96. Viewed in isolation, GTL's noncompliance with the instructions could have merely shifted its inmate calling services costs from one contract to another, a result that would have no impact on GTL's total reported costs for inmate calling services. GTL's Second Mandatory Data Collection response, however, leaves open the possibility that the company also failed to properly identify the direct costs of its non-inmate calling services operations. In that case, then GTL's method of identifying its indirect inmate calling services cost—"multiplying its total indirect costs by a percentage received from ICS divided by its total revenue"—almost certainly overstated its inmate calling services costs. Indeed, allocating total company costs based on revenue is particularly inappropriate for a company, like GTL, that is not only expanding beyond a core business—inmate calling services—by investing in other lines of business, but that also reaps revenues from egregiously high intrastate rates that serve to increase the amount of indirect costs allocated to inmate calling services reported under this methodology.[235]

97. In light of the impact that overstatements of this magnitude by one of the market's largest providers may have on our analysis, the Bureau has directed GTL to provide additional information regarding its operations, costs, revenues, and cost allocation procedures.[236] The information GTL files in response to this directive will be available to commenters, subject to the *Protective Order* in this

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[229] While the reduction lowers GTL's average costs from {[ ]} per minute, GTL's average costs remain {[ ]} above the industry average per minute cost. Upon reducing GTL's costs by the proposed percentage, the industry average per minute cost falls from $0.089 to $0.084 (staff analysis of Second Mandatory Data Request).

[230] For example, according to GTL's Annual Report filing, the {[}] has a maximum per minute rate for interstate and intrastate calls of {[ ]}, but a per paid minute cost of {[ ]}; and Vermont Department of Corrections, {[ ]}. Similar results obtain for GTL prison contracts in at least {[ ]} other geographically diverse states, and for GTL jail contracts in at least {[ ]} geographically diverse states.

[231] Second Mandatory Data Collection Instructions at 3.

[232] GTL Amended & Restated Description & Justification at 9.

[233] *Id.* at 8-9.

[234] *Id.* at 9.

[235] *See* GTL Annual Report, WC Docket No. 12-375 (filed Apr. 1, 2020).

[236] *See* Letter from Kris Anne Monteith, Chief, Wireline Competition Bureau, FCC, to Chérie R. Kiser, Cahill Gordon & Reindel LLP, Counsel for Global Tel*Link Corporation and Its Subsidiaries, WC Docket No. 12-375, DA 20-740 (WCB Jul. 15, 2020) (WCB July 15, 2020 Letter to GTL).

proceeding.[237] How should we properly value GTL's assets in a manner that excludes all market rents? How should we properly identify the direct costs of GTLs' inmate calling services and other operations? How should we allocate GTL's indirect costs using methods that reflect how those costs are incurred? We ask parties to address all aspects of GTL's responsive submission that may affect our ability to meaningfully evaluate GTL's cost data and methodology. We also ask how we should use the information in that submission in setting interstate rate caps for inmate calling services.

98. It also appears that other providers, notably Securus, may have also overstated their inmate calling services costs, although likely not to the same degree as GTL.[238] We invite each provider to reexamine its costing methodology in light of this *Further Notice* and to address in detail in its comments whether that methodology properly identifies and allocates its inmate calling services costs. Providers should also update their Second Mandatory Data Collection responses to correct any discrepancies. To the extent that providers do not do so, should we discount their reported costs and, if so, to what extent? Or should we instead require them to provide additional information regarding their operations, costs, revenues, and cost allocation procedures so that we can meaningfully evaluate their cost data and methodologies?[239]

3. Accounting for Correctional Facilities Costs

99. Our proposed interstate rate caps of $0.14 per minute for prisons and $0.16 per minute for jails include $0.02 per minute to account for the costs correctional facilities incur that are directly related to the provision of inmate calling services and that represent a legitimate cost for which providers of inmate calling services may have to compensate facilities.[240] This $0.02 per-minute allowance reflects our analysis of data submitted in response to the Second Mandatory Data Collection. The Second Mandatory Data Collection indicates that payments in excess of $0.02 per minute would exceed the costs correctional facilities incur in the provision of inmate calling services. Nevertheless, we recognize that for contracts covering only smaller jails, the facility costs at these particular facilities may exceed $0.02 per minute. We therefore consider adopting higher allowances for correctional facility costs for such contracts if the record in response to this *Further Notice* supports such allowances. We invite comment on these proposals.

100. *Background*. Site commissions are payments that inmate calling services providers make to correctional facilities.[241] They have two components. They compensate correctional facilities for the costs they reasonably incur in the provision of inmate calling services, and they compensate those facilities for the transfer of their market power over inmate calling services to the inmate calling services provider.[242] That market power is created by incarcerated people's inability to choose an inmate calling

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[237] *ICS Protective Order*, 28 FCC Rcd 16954.

[238] The mean contract per minute costs of Securus are nearly {[ ]}.

[239] *See* WCB July 15, 2020 Letter to GTL at 1.

[240] See GTL v. FCC, 866 F.3d at 414 ("We also leave it to the Commission to assess on remand which portions of site commissions might be directly related to the provision of ICS and therefore legitimate, and which are not.").

[241] Our rules define site commissions as:

> [A]ny form of monetary payment, in-kind payment, gift, exchange of services or goods, fee, technology allowance, or product that a Provider of Inmate Calling Services or affiliate of an Provider of Inmate Calling Services may pay, give, donate, or otherwise provide to an entity that operates a correctional institution, an entity with which the Provider of Inmate Calling Services enters into an agreement to provide ICS, a governmental agency that oversees a correctional facility, the city, county, or state where a facility is located, or an agent of any such facility.

47 CFR § 64.6000(t).

[242] *See 2016 ICS Reconsideration Order*, 31 FCC Rcd at 9304, para. 7.

services provider other than the provider the correctional facility selects, effectively creating a monopoly for inmate calling services within a prison or jail. This dynamic produces site commission payments that exceed correctional facilities' costs. The responses to the Second Mandatory Data Collection show that inmate calling services providers paid {[ ]} in site commissions which amounts to {[ ]} of total inmate calling services-related revenues in 2018.[243]

101. Allowing inmate calling services providers to treat all their site commission payments as "costs" would almost inevitably result in unjust and unreasonably high rates for incarcerated individuals and their loved ones to stay connected. Prior to 2016, the Commission viewed these payments solely as an apportionment of profits between providers and facility owners even though it recognized some portion of them may be attributable to legitimate facility costs.[244] In the *2016 ICS Reconsideration Order*, however, the Commission recognized that "some facilities likely incur costs that are directly related to the provision of ICS,"[245] and determined that "it is reasonable for those facilities to expect ICS providers to compensate them for those costs . . . [as] a legitimate cost of ICS that should be accounted for in [the] rate cap calculations."[246] The Commission therefore increased the rate caps it had adopted in 2015 to allow for the recovery of the facilities' legitimate costs. Because the qualitative record before it indicated that those per-minute costs increased as facilities' inmate populations decreased, the Commission varied its allowance for site commission payments based on correctional facilities' average daily populations.[247]

102. In 2017, the D.C. Circuit held that the "wholesale exclusion of site commission payments from the FCC's cost calculus" in the *2015 ICS Order* was "devoid of reasoned decision-making and thus arbitrary and capricious."[248] The court therefore vacated the Commission's decision to exclude site commission payments from its cost calculus and remanded the matter to the Commission for further consideration.[249]

103. *Allowance for Reasonable Correctional Facility Costs.* Consistent with the D.C. Circuit's opinion in *GTL v. FCC*,[250] we propose to include an allowance for site commission payments in the interstate rate caps to the extent those payments represent legitimate correctional facility costs that are directly related to the provision of inmate calling services. The $0.02 per minute that we propose reflects our analysis of the costs correctional facilities incur that are directly related to providing inmate calling services and that the facilities recover from inmate calling services providers as reflected by comparing

[243] The record in previous proceedings and the First Mandatory Data Collection also showed high site commission payments. In the *2013 ICS Order*, the record showed that site commission payments are often based on a percentage of revenues, which could range from 20% to 88%. *2013 ICS Order*, 28 FCC Rcd at 14125, para. 34. Data from the First Mandatory Data Collection showed that site commissions for at least one contract had reached as much as 96% of gross revenues. *2015 ICS Order*, 30 FCC Rcd at 12821, para. 122.

[244] *See, e.g.*, *2013 ICS Order*, 28 FCC Rcd at 14112, para. 7.

[245] *2016 ICS Reconsideration Order*, 31 FCC Rcd at 9307, para. 12.

[246] *Id*.

[247] *Id*. The rate caps for prepaid/debit inmate calling services calls were increased to "$0.31 per minute for jails with an average daily population (ADP) below 350, $0.21 per minute for jails with an ADP between 350 and 999, $0.19 per minute for jails with an ADP of 1,000 or more, and $0.13 per minute for prisons." The Commission also increased the rate caps for collect calls by a commensurate amount. *Id.* at 9315, para. 27. The Commission based these adjustment factors on comments and information provided in the record at that time but did not base its adjustments on an analysis of provider-submitted data as we do herein.

[248] *GTL v. FCC*, 866 F.3d at 417.

[249] *Id.*

[250] *Id.* at 413.

provider cost data for facilities with and without site commission requirements.[251] We request comment on this analysis, which is discussed in more detail in Appendix H. Does it properly capture the costs that providers should reasonably be expected to pay correctional facilities to cover the costs those facilities reasonably incur in connection with interstate inmate calling services? If not, how should we adjust our analysis? Should we, for example, vary the allowance for reasonable correctional facility costs based on a facility's average daily population, annual minutes of use, or other measure of expected calling volume? We ask correctional facilities to provide detailed information concerning the specific costs they incur in connection with the provision of interstate inmate calling services, to the extent those costs are not already reflected in providers' costs, and why those costs should be considered directly related to the provision of inmate calling services.[252] We also seek alternative analyses that explain whether a $0.02 per-minute allowance would properly cover those correctional facility costs that are legitimately related to inmate calling services. We similarly seek comment on whether we should reduce the allowance for prisons to $0.01 based on the analysis reflecting the differential of providers' costs with and without a site commission obligation for prison facilities.[253]

104. We also invite comment on whether a $0.02 per minute allowance would be adequate to cover the costs that smaller jails incur in connection with the provision of interstate inmate calling services. We ask that parties seeking a higher allowance in this situation document in detail the specific costs smaller jails reasonably incur in the provision of interstate inmate calling services. We also seek comment on whether there is any other category of contracts or correctional facilities for which a $0.02 per-minute allowance may be inadequate.

105. In *GTL v. FCC*, the D.C. Circuit directed that the Commission address on remand the issue of whether "the exclusion of site commissions . . . violates the Takings Clause of the Constitution because it forces providers to provide services below cost."[254] We do not believe that there are any potential taking concerns arising from our rate cap proposals.[255] Inmate calling services providers' payment of site commissions is consistent with agreements between other types of payphone providers and property owners.[256] The Commission has acknowledged that, as a result of the dynamic between

[251] *See* Appx. H. This analysis treats any costs associated with site commission payments as correctional facility costs, and not inmate calling services provider costs. *Id.*

[252] *See* Letter from Mary J. Sisak, Counsel for the National Sheriffs' Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed June 12, 2015) (National Sheriffs' Association *Ex Parte*); *see also 2015 ICS Order*, 30 FCC Rcd at 12823, para. 126 n.415.

[253] *See generally* Appx. H.

[254] *GTL v. FCC*, 866 F.3d at 414; *see also* U.S. Const. amend. V ("[P]rivate property [shall not] be taken for public use, without just compensation.").

[255] The Commission has not received any post-remand comments addressing the takings issue with respect to adopting permanent interstate rate caps. The Commission did, however, receive a single comment from an inmate calling services provider in response to the Worth Rises Request that inmate calling services providers offer "unlimited free service" during COVID-19 in the event ICS providers did not sign the Chairman's Keep America Connected Pledge. The "takings" reference in that response, however, pertained to a request that providers offer service with no compensation, unlike the actions proposed herein where the Commission proposes just and reasonable rate caps that include recovery for facility provider costs, based on providers' reported costs. *See* Letter from Andrew D. Lipman, Attorney for Securus Technologies, LLC, and Dennis J. Reinhold, Senior Vice President and General Counsel, Securus Technologies LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed Apr. 17, 2020) (responding to Worth Rises Request).

[256] Because "many of the payphone locations are controlled by owners that can limit the entry of competing payphones," the property owners "attempt to limit entry to increase the profitability of payphones and then demand at least a share of the profits in the form of a location rent." *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545, 2562, para. 37 (1999) (*Payphone Third Report and Order*).

payphone operators and property owners, we would "not expect to see money-losing payphones[.]"[257] Because site commissions are part of voluntary, negotiated agreements between inmate calling services providers and the correctional facilities they serve, we similarly do not expect inmate calling services providers to be forced to provide services at a loss, provided that the rate caps allow them to recover their actual costs plus a reasonable opportunity for profit.[258] Here, our proposed rate caps include an allowance of $0.02 per minute, as indicated above, to account for correctional facility costs included in reasonable site commissions; thus they reflect the actual costs of providing service as reported by providers in the record, plus a reasonable opportunity for profit. Because our proposed rate caps allow the correctional facility and the inmate calling services provider to recover all of their costs that are reasonably related to the provision of inmate calling services plus a reasonable opportunity for profit, there is no concern that the proposed rate caps violate the Takings Clause.[259] We seek comment on these views.

106. The Public Interest Advocates assert that, in *GTL v. FCC*, the D.C. Circuit "did not consider several important factors in the FCC's decision-making, including decades of consistent competition policy excluding locational monopoly payments from rates . . . and repeated FCC decisions to preempt state and local rules or contract provisions that the FCC finds are anti-competitive . . . ."[260] To ensure a complete record, we seek comment on this view. Notwithstanding the Commission's decision in 2016 recognizing that some portion of site commissions reflect legitimate facility costs related to the provision of inmate calling services, we seek comment on whether including an allowance for correctional facility costs in our rate caps will have adverse competitive effects that we should consider.[261] If so, what are those effects?

107. We seek comment on what types of correctional facility costs should properly be recovered through the rates that consumers pay for inmate calling services.[262] Commenters are encouraged to provide detailed responses, describing with specificity which types of correctional facility costs they contend should, or should not be, recovered through those rates. We ask, in particular, whether correctional facilities' security and surveillance costs in connection with inmate calling services should be recovered through inmate calling services rates.[263] As the Public Interest Advocates point out, correctional facilities do not pass on the costs of other types of security measures, such as scrutinizing mail, to incarcerated people or their families.[264] Given this, to what extent, if at all, should security and surveillance costs be recovered through inmate calling services rates, particularly in light of the D.C. Circuit's decision in *GTL v. FCC*?

4. Waiver Process for Outliers

108. We propose to adopt a waiver process that permits inmate calling services providers to seek waivers on a facility-by-facility or contract basis if the rate caps adopted by the Commission pursuant to this *Further Notice* would prevent the provider from recovering the costs of providing interstate inmate calling services at that facility or at the facilities covered by that contract. We seek comment on this proposal. Since first adopting interstate rate caps in the *2013 ICS Order*, the

[257] *Id.* at 2564, para. 39.

[258] *See* 47 U.S.C. § 276 (providing that all payphone service providers be fairly compensated).

[259] *See Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 437 (5th Cir. 1999) (stating that to succeed on a "takings" claim, a party must demonstrate that the losses caused by the regulation in question "are so significant that the 'net effect' is confiscatory").

[260] *See* Public Interest Advocates July 29, 2020 *Ex Parte* at 5.

[261] *See id.*

[262] *See* UCC July 29, 2020 *Ex Parte* at 2.

[263] *See* Public Interest Advocates July 29, 2020 *Ex Parte* at 5.

[264] *See id.*

Commission has permitted an inmate calling services provider to file a petition for waiver if it believed it could not recover its costs under the Commission-adopted rate caps.[265] The Commission has required that, for "substantive and administrative reasons, waiver petitions would be evaluated at the holding company level."[266] We propose to revise the waiver process so that it must be evaluated at a facility or contract level.[267] We seek further comment on administering the waiver process to address cost recovery on a facility or contract basis. In particular, are there ways to decrease the administrative burdens of processing such requests on a facility or contract basis?

109. We propose that a provider seeking a waiver of our interstate rate caps must demonstrate, through the submission of reliable, accurate, and transparent cost, demand, and revenue data, including data on any ancillary services it provides, that it will be unable to recover its costs for each facility or contract for which a waiver is sought. At a minimum, we propose that a provider seeking such a waiver be required to submit, among other information: (a) the providers' total company costs, including the original costs of the assets it uses to provide inmate calling services at the facility or under the contract; (b) the provider's methods for identifying its direct costs and for allocating its indirect costs among its various operations, contracts, and facilities; (c) the revenue the provider receives from interstate inmate calling services, including the portion of any permissible ancillary services fees attributable to interstate inmate calling services at the contract and facility level; (d) an unredacted copy of the contract with the correctional facilities and any amendments to such contract; and (e) a copy of the initial request for proposals and bid response. We seek comment on these proposed requirements. Is there additional information available on a contract or facility level that we should require providers to submit besides the information, documents, and data we have proposed?

110. We also propose to require that the provider explain why circumstances associated with that facility or contract differ from other similar facilities it serves, and from other facilities within the same contract, if applicable. Finally, we propose to require a company officer with knowledge of the underlying information to attest to the accuracy of all of the information the provider submits in support of its waiver request. We seek comment on these proposals.

111. Consistent with our past waiver process for inmate calling services,[268] we propose to direct the Bureau to rule on such petitions for waiver, and to seek any additional information as needed. We also propose to direct the Bureau to endeavor to complete its review of any such petitions within 90 days of the provider's submission of all information necessary to justify such a waiver, although the Bureau may extend this timeframe for good cause. We propose that, if a provider carries its burden of demonstrating that our rate caps are insufficient to cover the costs it incurs to serve a particular facility, the Bureau would waive the otherwise applicable rate cap and allow the provider to charge a rate sufficient to allow the provider an opportunity to recover its costs of providing interstate inmate calling services at that facility. We seek comment on this proposed approach and on the proposed remedies. We also seek comment on whether there are alternative procedures that would more efficiently facilitate the effective operation of the waiver process.

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[265] *2013 ICS Order*, 28 FCC Rcd at 14153, para. 82. The Commission reaffirmed its waiver process for inmate calling services providers in the *2015 ICS Order*. *See 2015 ICS Order*, 30 FCC Rcd at 12871, para. 219; *see also* 47 CFR § 1.3. These portions of the *2015 ICS Order* were left unaltered by the court's 2017 vacatur. *See generally GTL v. FCC*, 866 F.3d 397.

[266] *2015 ICS Order*, 30 FCC Rcd at 12870, para. 217 (internal citations and quotation omitted).

[267] *See, e.g.*, Securus Technologies, Inc., Comments, WC Docket No. 12-375, at iii, 40-41 (filed Jan. 12, 2015) (asserting that "the current standard for obtaining a waiver is far too onerous" and suggesting that the Commission permit carriers to seek waivers on a site-by-site basis); Global Tel*Link Corporation Comments, WC Docket No. 12-375, at 13-14 (filed Jan. 12, 2015) (stating that "[a]s explained in the Joint Provider Proposal Form, waivers of rate caps should be permissible only [on] a facility-by-facility basis").

[268] *See 2013 ICS Order*, 28 FCC Rcd at 14154, para. 84; *2015 ICS Order*, 30 FCC Rcd at 12868, para. 212.

5. Consistency with Section 276 of the Act

112. Section 276(b)(1)(A) of the Act requires that the Commission "ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call."[269] In this *Further Notice*, we propose to adopt rules that satisfy this statutory mandate by setting rate caps for interstate calls that generate sufficient revenue for such calls (including any ancillary fees attributable to those calls) that (1) allow the provider to recover from those calls the direct costs of that call and (2) reasonably contribute to the provider's indirect costs related to inmate calling services. This approach would recognize that inmate calling services contracts typically apply to multiple facilities and that inmate calling services providers do not expect each call to make the same contribution toward indirect costs. We invite comment on this proposal.

113. In the *2015 ICS Order*, the Commission set tiered rate caps, applicable to both interstate and intrastate inmate calling services using industry-wide average costs derived from inmate calling services providers' responses to the First Mandatory Data Collection.[270] In *GTL v. FCC*, the D.C. Circuit rejected as "patently unreasonable" the Commission's "averaging calculus" in setting the 2015 rate caps.[271] The court explained that the Commission erred in setting rate caps using industry average costs, because calls with above-average costs would be "unprofitable," in contravention of the "mandate of § 276 that 'each and every' inter- and intrastate call be fairly compensated."[272]

114. We find that our proposed rules are consistent with *GTL v. FCC* in this regard. Though the D.C. Circuit found that the Commission's averaging calculus did not comport with the fair compensation mandate under section 276, this finding does not mean that each and every completed call must make the same contribution to a provider's indirect costs. Instead, compensation is fair if each call "recovers at least its incremental costs, and no one service recovers more than its stand-alone cost."[273] Our proposed rate methodology, as detailed in Appendix E, is consistent with this approach. As the Commission recognized in the *2002 ICS Order*, the "lion's share of payphone costs are those that are 'shared' or 'common' to all services," and there are "no logical or economic rules that assign these common costs to 'each and every call.'"[274] As a result "a wide range of compensation amounts may be considered 'fair.'"[275] We seek comment on this view. Is compensation "fair" if inmate calling services providers can recover their direct costs for a given call and receive a reasonable contribution to their indirect costs? Why or why not? Can inmate calling services providers assign indirect or common costs for each and every call? If so, how? Commenters arguing that indirect costs can be assigned to each call must provide data regarding how that assignment can be done and a justification for why a given allocation is reasonable.

115. We have estimated that more than 99% of existing contracts for both prisons and jails would recover their reported costs at our proposed rates, even accepting all the providers' costs submissions at face value with no adjustments. To the extent that our proposed rates would make it

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[269] 47 U.S.C. § 276(b)(1)(A).

[270] *2015 ICS Order*, 30 FCC Rcd at 12790, para. 52 ("Costs per minute were calculated using a weighted average per minute cost . . . .") & n.170 (explaining that providers will be able to "recover average costs at each and every tier").

[271] *GTL v. FCC*, 866 F.3d at 414.

[272] *Id.* (quoting *Am. Pub. Commc'ns Council v. FCC*, 215 F.3d 51, 54, 57-58 (D.C. Cir. 2000)).

[273] *2002 ICS Order*, 17 FCC Rcd at 3256, para. 18.

[274] *Id.* at 3255, para. 16.

[275] *Id.* (citing *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545, 2570, para. 56 (1999)).

impossible in the unusual case where a contract was not able to recover its costs, providers may avail themselves of our waiver process. Moreover, the record in this proceeding strongly suggests that inmate calling services providers do not, in fact, expect that each call or even facility will make a contribution to their indirect costs. This is evidenced most acutely by the fact that providers largely fail to even record their costs on anything less than a contract basis, often where multiple facilities exist under one contract. For example, CenturyLink reports its inmate calling services cost data "by correctional system," explaining that "each facility within that correction[al] system reflects the costs developed for serving that contract."[276] This evidence suggests that CenturyLink bids for contracts covering multiple facilities within a single correctional system, offering service at a single rate for all of those facilities, even though they may have different costs. Thus, the company does not expect to make the same profit from each facility or expect each call to contribute equally to CenturyLink's indirect costs. Similarly, Securus explains that its "accounting systems track costs as a company, and not on a customer or facility level" but that "facility-specific costs are taken from a separate data base used to track profits and losses for each site."[277] And the assertion that Securus tracks costs "as a company" rather than on a customer or facility level strongly suggests that Securus, like other providers, bids for contracts, rather than specific facilities, with the idea that the company will profit from the contract as a whole but will not make the same amount from each facility or each call. It also appears that inmate calling services providers bid on contracts covering multiple facilities and offer a single interstate rate for calls from those facilities even though the provider may incur different costs to serve various facilities covered by a single contract. Do commenters agree? What factors do providers of inmate calling services consider in bidding on contracts, particularly contracts covering more than one facility? We seek comment on this issue and on whether commenters agree that our proposed rate caps would meet the fair compensation standard of section 276 of the Act.

6. Cost-Benefit Analysis

116. We propose to find that, independent of our statutory obligation, the benefits of our interstate rate cap proposal (reducing our current caps on interstate inmate calling rates to $0.14 per minute for prisons and $0.16 per minute for jails) exceeds the costs at least five-fold. Specifically, we expect an increase in interstate inmate call volumes elicited by lowered rates would conservatively generate approximately $7 million in direct benefits due to expanded call volumes, primarily to the benefit of incarcerated people, their families, and friends. We also expect resulting expanded call volumes to reduce recidivism, which will in turn reduce prison operating costs, foster care costs, and crime. We estimate these secondary benefits to well-exceed $23 million. We estimate the one-time cost of implementing the interstate rate cap changes to be $6 million. We seek comment on these estimates.

117. *Expected Benefits of Expanded Call Volumes*. To estimate the benefits of our proposed lower rates we estimate how many call minutes are currently made at prices above those rates, the price decline on those call minutes that moving to our rates would imply, and the responsiveness of demand to a change in price. We estimate, in 2018, approximately 592 million interstate prepaid and debit minutes and 3.3 million interstate collect minutes were made to or from prison individuals incarcerated in prisons at rates above our proposed caps, and approximately 453 million interstate prepaid and debit minutes and 2 million interstate collect minutes were made to and from individuals incarcerated in jails at rates above our proposed caps.[278] These estimates are calculated as the difference between total interstate minutes in each category and the equivalent interstate minutes from nine states—Alaska, Delaware, Hawaii,

[276] Letter from John E. Benedict, Vice President – Federal Regulatory Affairs & Regulatory Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, Attach. at 3 (filed Mar. 1, 2019) (CenturyLink Second Mandatory Data Collection Response).

[277] *See* Description and Justification for Securus Technologies, Inc.'s Mandatory Data Collection Report (Redacted for Public Inspection) at 1 (filed Mar. 1, 2019).

[278] We used rate information from the 2019 Annual Reports and interstate minutes from the Second Mandatory Data Collection.

Maryland, New Mexico, Texas, Vermont, Washington, and West Virginia—where either the rates of some important contracts are below the caps we propose, or all of the rates are below the caps we propose. These estimates likely understate the number of interstate minutes with rates that exceed our proposed caps because we exclude from our calculations many contracts which have rates in excess of our proposed rates, even if in some cases we include those relatively rare contracts with rates below our proposed rates. We estimate prices for those call minutes decline by half of the difference between our current caps and our proposed caps.[279] Finally, we estimate, relying on a price elasticity of demand at the lower end of those estimated for interstate calling, a price elasticity of demand at the lower end of those estimated for interstate calling: that for each percentage point drop in rates, inmate calling services demand will increase by 0.2%.[280] Under these assumptions, we estimate annual benefits of approximately $1 million, or a present value over ten years of approximately $7 million.[281] Additionally, even at current demand levels, we estimate the cost savings to incarcerated individuals, their families, and friends, from lower calling rates alone, to be $32 million per year or $225 million in present value terms over 10 years.[282]

118. We also expect greater call volumes to reduce recidivism, generating further benefits well in excess of $23 million.[283] Although we do not know exactly how much increased telephone contact

[279] Our current interim rate caps are $0.21 for debit and prepaid calls and $0.25 for collect calls. Our proposed rates imply the following price declines from these rates: for prison debit and prepaid calls, 33% (= ($0.21-$0.14)/$0.21); for prison collect calls, 44% (= ($0.25-$0.14)/$0.25); for jail debit and prepaid calls, 24% (= ($0.21-$0.16)/$0.21); and for prison collect calls, 36% (= ($0.25-$0.16)/$0.25). To allow for contracts with rates below the current caps, we assume inmate calling services rates fall only one-half the difference between the existing rate caps and the proposed caps.

[280] We assume a price elasticity of -0.2. This estimate comes from the most recent data available to us and is conservative relative to most other estimates we reviewed. *See* Michael R. Ward & Glenn Woroch, *The Effect of Prices on Fixed and Mobile Telephone Penetration: Using Price Subsidies as Natural Experiments*, 22 Information Economics and Policy 1, 1-120 (2010), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1459075. On the one hand, this is likely an understatement because on average incarcerated individuals and their families and friends have lower incomes than the general population. *See* Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned*, Prison Policy Initiative (July 9, 2015), https://www.prisonpolicy.org/reports/income.html. On the other hand, inmates may not be fully able to respond to lower prices given limits on making calls. For example, call lengths are often limited to 15 or 20 minutes (based on staff analysis of the Second Mandatory Data Collection). For price elasticity estimates, we also reviewed Christopher Garbacz & Herbert Thompson, Jr., *Assessing the Impact of FCC Lifeline and Link-Up Programs on Telephone Penetration*, 11 Journal of Regulatory Economics 67, 67-78, https://link.springer.com/content/pdf/10.1023%2FA%3A1007902329324.pdf; Jerry Hausman & Howard Shelanski, *Economic Welfare and Telecommunications Regulation: The E-Rate Policy for Universal-Service Subsidies*, 16 Yale J. on Reg. 36, 36-39 (1999), https://digitalcommons.law.yale.edu/yjreg/vol16/iss1/3/; Michael Ward & Glenn Woroch, *Usage Substitution Between Mobile Telephone and Fixed Line in the U.S.* (2004), https://eml.berkeley.edu/~woroch/usage%20substitution.pdf; Jeffery Wheatley, *Price Elasticities for Telecommunications Services with Reference to Developing Countries*, Department of Media and Communications, London School of Economics and Political Science (2006), https://idl-bnc-idrc.dspacedirect.org/handle/10625/41878; Frank Wolak, *The Welfare Impacts of Competitive Telecommunications Supply: A Household-Level Analysis*, 1996 Brookings Papers on Economic Activity, Microeconomics 269, 269-350 (1996), https://www.brookings.edu/wp-content/uploads/1996/01/1996_bpeamicro_wolak.pdf.

[281] The present value of a 10-year annuity of $1 million at a 7% discount rate is approximately $7 million. *See* OMB, Circular A-4, Regulatory Analysis, 33 (Sept. 17, 2003). The Office of Management and Budget recommends using discount rates of 7% and 3%. Erring on the side of understatement, we use the 7% rate.

[282] We note this benefit is not a "net" benefit, however, given that it is offset for purposes of our analysis by the loss of the inmate calling service industry of $218 million in revenues in present value terms over 10 years.

[283] It is well established that family-to-incarcerated individual contact reduces recidivism. *See, e.g.*, Minnesota DOC Study at 27 (demonstrating that one visit reduced the risk of recidivism by 13% to 25%); William D. Bales & Daniel P. Mears, *Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism?*, 45 Journal of

(continued….)

would reduce recidivism among incarcerated individuals, savings of more than $3 million per year, or more than $20 million over 10 years in present value terms, would result if only 100 fewer individuals were incarcerated due to recidivism each year.[284] Other savings would also be realized, for example, through reduced crime,[285] and fewer children being placed in foster homes.[286] The potential scale of fiscal saving—in addition to the immense social benefits—is suggested by the fact that administrative and maintenance costs incurred by state and local governments average $25,782 per foster placement.[287] We seek comment on these expected societal cost reductions.

119. *Costs of Reducing Rates for Interstate Inmate Calling Services Calls*. The costs of reducing rates for interstate inmate calling services calls are likely to be modest for providers, estimated at approximately $6 million. Including the Federal Bureau of Prisons and Immigration and Customs Enforcement, approximately 3,000 inmate calling services contracts would need to be revised if we were to adopt our proposed rules, and a smaller number of administrative documents may need to be filed to incorporate lower interstate rates. We estimate that these changes would require approximately 25 hours of work per contract. We use a $70 per hour labor cost to implement billing system changes, adjust contracts, and to make any necessary website changes.[288] The estimated cost of these actions is $5,139,750 (= 2,937 (number of contracts)*25 (hours of work per contract) *$70 per hour), which we round up to $6 million to be conservative. We seek comment on this estimate of costs.

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Research in Crime and Delinquency 287, 287-321 (2008), https://www.researchgate.net/publication/237298166_Inmate_Social_Ties_and_the_Transition_to_Society_Does_Visitation_Reduce_Recidivism (explaining that each additional family visit lowered the likelihood of recidivism two years after release by 3.8%); *see also* Public Interest Advocates July 29, 2020 *Ex Parte* at 2-3.

[284] Approximately $33,274 per year would be saved for every case of recidivism avoided, or $3.3 million per year for 100 cases avoided. *See* Vera, *Prison Spending in 2015*, https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending (last visited July 13, 2020) (estimating the 2015 average cost per person incarcerated in state prison at $33,274 for 45 states accounting for 1.29 million of the 1.33 million total persons incarcerated in state prisons). The average annual cost of incarceration for federal inmates was a comparable $34,704 in Fiscal Year 2016. *See* Bureau of Prisons, Department of Justice, Annual Determination of Average Cost of Incarceration, 83 Fed. Reg. 18863 (Apr. 30, 2018), https://www.govinfo.gov/content/pkg/FR-2018-04-30/pdf/2018-09062.pdf. One hundred fewer cases of recidivism in each year would represent approximately 0.02% of those released from prison each year, a negligible decline in the recidivism rate. To allow for releases to continue to exceed admissions (*id*. at 1), the calculation assumes that 500,000 persons are released every year. In 2018, approximately 600,000 persons were admitted to prison. *See* E. Ann Carson, Bureau of Justice Statistics, Department of Justice, *Prisoners in 2018*, at 13 (Apr. 30, 2020), https://www.bjs.gov/content/pub/pdf/p18.pdf. The present value of a ten-year annuity of $3.3 million at a discount rate of 7% is approximately $23.2 million.

[285] Council of Economic Advisors, *Returns on Investments in Recidivism-Reducing Programs*, at 3 (May 2018), https://www.whitehouse.gov/wp-content/uploads/2018/05/Returns-on-Investments-in-Recidivism-Reducing-Programs.pdf.

[286] United States Government Accountability Office, *Child Welfare: More Information and Collaboration Could Promote Ties Between Foster Care Children and Their Incarcerated Parents*, at 11 (Sept. 2011), https://www.gao.gov/assets/590/585386.pdf.

[287] Nicholas Zill, *Better Prospects, Lower Costs: The Case for Increasing Foster Care Adoption*, at 3 (May 2011), https://www.adoptioncouncil.org/images/stories/NCFA_ADOPTION_ADVOCATE_NO35.pdf.

[288] We use an hourly wage for this work of $42. (We examined several potential wage costs. For example, in 2019, the median hourly wage for computer programmers was $41.61, and for accountants and auditors, it was $34.40. We chose the higher of these. *See* Bureau of Labor Statistics, *Occupational Employment Statistics*, https://www.bls.gov/oes/.) This rate does not include non-wage compensation. To capture this, we markup wage compensation by 46%. In March 2020, hourly wages for the civilian workforce averaged $25.91, and hourly benefits averaged $11.82 yielding a 46% markup on wages. *See* Bureau of Labor Statistics, *National Compensation Survey*, https://www.bls.gov/ncs/. The result is an hourly rate of $61.32 (= $42 x 1.46), which we round up to $70.

120. We also recognize that lowering per-minute rates could result in lower investment because a substantial proportion of industry costs do not vary with minutes carried, but must be covered. We do not expect, however, reduced investment to be a significant concern, however, given our findings that the proposed rates would more than recover efficient total costs of operation. We seek comment on this view.

121. *Summary of Benefits and Costs*. On net, we estimate that the actions we propose today would result in benefits which far exceed their costs. While we identify a range of benefits, for the purposes of a cost benefit analysis, we only quantify the direct benefits from some of these. Looking out only ten years, the conservative estimate of these benefits alone is approximately $30 million in present value terms. We expect other substantial benefits due to reduced recidivism. By contrast, we conservatively estimate the high side of costs of our actions to be approximately $6 million. We seek comment on ways to improve these estimates, including how to quantify any indirect or secondary benefits we were unable to quantify here, as well as on any additional costs and benefits of our proposed actions that we have not considered.

B. Proposing International Rate Caps

122. We propose to establish a rate cap formula that inmate calling services providers must use in setting the maximum permissible per-minute rates for international inmate calling services. We seek comment on our proposal to cap international inmate calling service rates. In the *2015 ICS Further Notice*, the Commission sought specific comment on whether and how to reform rates for international inmate calling services,[289] including on extending its domestic inmate calling service rate caps to international inmate calling service calls.[290] The Commission has also collected international inmate calling service rate and cost data from inmate calling services providers, including in annual reports and the Second Mandatory Data Collection.[291]

123. There is no question that we have authority to adopt rate caps for international inmate calling services pursuant to section 201(b) of the Act.[292] Moreover, while the record on the need for international inmate calling service reform is mixed,[293] our most recent data reflecting international calling rates for many inmate service providers convinces us such reform is needed.

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[289] *2015 ICS Further Notice*, 30 FCC Rcd at 12911-14, paras. 316-23.

[290] *Id.* at 12912, para. 320.

[291] *See, e.g.*, 47 CFR § 64.6060(a)(1) (requiring inmate calling services providers to report international rates annually). *See generally Instructions for Inmate Calling Services Mandatory Data Collection* (June 16, 2014), https://www.fcc.gov/document/instructions-inmate-calling-services-mandatory-data-collection (First Mandatory Data Collection Instructions); *2019 Data Collection Public Notice*, 34 FCC Rcd at 515. The Second Mandatory Data Collection required inmate calling services providers to report cost data, including total costs for international calling, at the facility level for calendar years 2014 to 2018. Second Mandatory Data Collection Instructions at 2.

[292] *See, e.g.*, *2015 ICS Order*, 30 FCC Rcd at 12912, para. 318 (stating that section 201(b) of the Act provides the Commission with the authority to ensure that carriers' rates for "foreign" communications are just and reasonable) (internal quotation marks omitted); *Reporting Requirements for U.S. Providers of International Telecommunications Services*, IB Docket No. 04-112, 26 FCC Rcd 7274, 7315, para. 121 (2011); *American Telephone and Telegraph Co*., 57 FCC 2d 1103, 1106, para. 13 (1976) ("Sections 201-205 of the Communications Act require that all charges of United States carriers for international services shall be just and reasonable.").

[293] Some commenters have urged the Commission to regulate international inmate calling services rates, arguing that the Commission has the authority and obligation to ensure just and reasonable rates. *See* Wright Petitioners, D.C. Prisoners' Legal Services Project, and Citizens United for Rehabilitation of Errants Reply, WC Docket No. 12-375, at 16 (filed Feb. 8, 2016); Letter from Karina Wilkinson and Alix Nguefack, New Jersey Advocates for Immigrant Detainees, and Rebecca Hufstader and Alina Das, New York University School of Law Immigrant Rights Clinic, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 3-4 (filed June 30, 2015) (NJAID/NYU IRC June 30, 2015 *Ex Parte*); Human Rights Defense Center Reply, WC Docket No. 12-375, at 11-12 (filed Feb. 8, 2016)

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124. *Calculating International Rate Caps.* We propose to adopt a rate cap formula for international inmate calling services calls that permits a provider to charge a rate up to the sum of the inmate calling services provider's per-minute interstate rate cap for that correctional facility *plus* the amount that the provider must pay its underlying international service provider for that call on a per-minute basis (without a markup).[294] We seek comment on this proposal. Our proposal is designed to enable the provider to recover the full costs of the international telephone service it is essentially reselling to the inmate calling services consumer,[295] plus the cost it incurs to make that service available to persons incarcerated in that facility. As a result, we believe this international rate cap would be just and reasonable under section 201(b) of the Act and would enable inmate calling services providers to account for the widely varying costs and associated international rates they are charged by their wholesale suppliers of international calling capability. We seek comment on this view.

125. We believe our proposal has the benefit of simplicity and ease of administrability. It would allow inmate calling services providers to recover the additional costs they incur to resell international calling services, yet should result in substantial reductions in international calling rates for incarcerated individuals and their families based on what many providers report for certain international calling rates in their latest Annual Reports. Additionally, it would account for the varied international rates identified by some commenters,[296] and enable providers to charge higher international calling services rates than charged for domestic calls to the extent international settlement rates and foreign termination rates make the costs to transport and terminate international calls higher than those for domestic calls.[297] We seek comment on this proposed approach. Would capping international rates in this way ensure that incarcerated individuals and their families and other loved ones do not pay unreasonably high international rates? Why or why not? Would it address the concerns of GTL and Pay Tel that imposing a single rate cap would be difficult because international calling rates vary based on factors including the location called or the type of call?[298] Are there other factors besides the costs incurred by inmate calling services providers in paying their underlying facilities-based or wholesale international

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(requesting that the Commission implement rate caps that are just and reasonable after it "has reviewed sufficient cost data for international calls"); Public Interest Advocates July 29, 2020 *Ex Parte* at 3-4 (expressing support for the Commission's proposal to cap international inmate calling services rates). Another party has claimed that international calling is such a small percentage of inmate calling that it need not be regulated. Pay Tel Jan. 19, 2016 Comments at 14; *cf.* Letter from Anthony J. Annucci, Acting Commissioner, New York Department of Corrections and Community Supervision, to Gregory V. Haledjian, Attorney Advisor, FCC, WC Docket No. 12-375 at 3 n.ii (filed July 16, 2013) (explaining that international calling accounts for less than 1% of the Department's inmate calling volume).

[294] This allowance for international transmission capability would exclude any amount that is rebated to, or otherwise shared with, the inmate calling services provider. *Cf.* Letter from Martin Ryan, President, California State Sheriffs' Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed Oct. 14, 2015) (expressing concern that the Commission's proposed rate caps "will not provide enough revenue to . . . allow for appropriate revenue sharing whether through site commissions or *some other mechanism*") (emphasis added).

[295] *See* Pay Tel Jan. 19, 2016 Comments at 10 (observing that some inmate calling services providers "resell ICS . . . provisioned by others"); Human Rights Defense Center Comments, WC Docket No. 12-375, at 8 (filed Jan. 12, 2015) (explaining allegations that GTL "[purchases its] minutes for calls terminating within the United States for less than 3/10 of a penny per minute and . . . often resell[s] the minutes it buys at more than 100 times their cost") (internal quotation marks and citation omitted).

[296] Global Tel*Link Corporation Comments, WC Docket No. 12-375, at 8-9 (filed Jan. 19, 2016) (GTL Jan. 19, 2016 Comments); Pay Tel Jan. 19, 2016 Comments at 14-15.

[297] CenturyLink Jan. 19, 2016 Comments at 11; GTL Jan. 19, 2016 Comments at 8.

[298] GTL Jan. 19, 2016 Comments at 8-9; Pay Tel Jan. 19, 2016 Comments at 14-15; *see also* California State Sheriffs' Association Comments, WC Docket No. 12-375, at 2 (filed Jan. 19, 2016) (explaining that "the costs and requirements of providing international ICS potentially vary by facility").

services providers that the Commission should consider in formulating international rate caps? If so, what are those factors and how could we account for them in determining appropriate rate caps?

126. The record contains a wealth of information regarding international inmate calling services rates. CenturyLink suggests that "[t]he cost to terminate residential or business international calls is often many times greater than the cost to terminate calls in the United States, even for frequently called countries like Canada and Mexico."[299] CenturyLink also explains that "simple network and termination costs—ignoring other prison-specific costs related to such things as security, billing and consumer services—to many African and East European countries can be $0.25 per minute or greater."[300] According to some commenters, international rates are exceedingly high in some correctional facilities, some as high as $45 for a 15-minute call.[301] Another commenter cites rates of $0.75 per minute, or $11.25 for a 15-minute international call, at a facility in California.[302] These data compare with a total permissible rate of $6.90 or $7.50 for a 15-minute debit/prepaid or collect call, respectively, under the Commission's interim interstate rate caps ($3.15 or $3.75) plus the $0.25 per minute that CenturyLink's suggests are the costs for some international calls ($3.75). We believe our proposal addresses the differences in international inmate calling services costs even without more specific information about each individual cost component of any specific international inmate calling services call. Do commenters agree? If not, why not, and what data should we rely on instead to establish international rate caps?

127. We disagree with commenters that suggest that because international inmate calling services calls represent such a small percentage of all inmate calls that the Commission should not consider establishing rate caps.[303] In 2018, international call minutes represented 0.195% of all calling minutes."[304] From 2014 to 2018, international calling in prisons did not exceed 0.5% of total annual minutes of use, while for jails, international calling never exceeded 0.4% of total minutes of use. But we are unable to determine from the record, however, whether these small percentages result from the needs of the incarcerated population or excessively high rates for international inmate calling services calls. For example, one provider reports international calling rates as high as $8.58 per minute for debit calls,[305] yet other providers report far lower international rates (but still more than two to five times higher than interstate rate caps) for debit calls to that same country.[306] What is more, just because international calls from correctional facilities may represent a small overall percentage of inmate calls does not mean

[299] CenturyLink Jan. 19, 2016 Comments at 11.

[300] *Id*.

[301] *See* New Jersey Advocates for Immigrant Detainees and New York University School of Law Immigrant Rights Clinic Comments, WC Docket No. 12-375, at 2 (filed Jan. 10, 2015); *see also* NJAID/NYU IRC June 30, 2015 *Ex Parte*, at 3 (providing a table showing international inmate calling services rates in New Jersey immigration detention facilities).

[302] Margaret Bick Reply, WC Docket No. 12-375, at 1 (filed Feb. 1, 2016).

[303] *See, e.g.*, Pay Tel Jan. 19, 2016 Comments at 14.

[304] *See generally* Second Mandatory Data Collection.

[305] *See* Letter from Chérie Kiser, Counsel to Global Tel*Link, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, Attach. at Tab II (filed Apr. 1, 2020) (showing a prepaid/debit rate of $8.58 at the CCA-Cimarron Correctional facility in Oklahoma).

[306] GTL failed to provide in its most recent Annual Report the international rate it charges to call each country, and instead provides only the highest rate charged for an international call at each facility it serves without identifying the country to which that rate applies. When we compare that GTL international rate to the highest international rate that other providers charge to serve any country, and assuming that highest rate is to the same country GTL charges $8.58 to serve (for example, CenturyLink's highest international rate to any country is $1.00 per minute; NCIC's highest is $1.50; Pay Tel's highest is $0.95; Prodigy's highest rate is $0.50 and ICSolutions's highest is $1.00),we find it difficult to believe such massive disparities in rates to the same foreign country are really attributable to cost differentials.

incarcerated individuals and their loved ones reliant upon international telephone calls to stay in touch are not entitled to the same just and reasonable protections afforded domestic callers under the Act. This is especially the case when loved ones residing in foreign locations may be unable to take advantage of in-person visitation.[307]

128. *Alternative Proposals*. We seek comment on alternative proposals for establishing an international rate cap. We invite commenters to propose specific alternative methodologies and associated rate caps for international calls that ensure that incarcerated individuals and their families pay just and reasonable rates for international inmate calling services while inmate calling providers receive fair compensation.

129. *Waiver Process for Outliers.* In the event that our proposed international rate cap would prevent a provider from recovering the costs of providing international inmate calling services at a facility or facilities covered by a particular contract, we propose to adopt a waiver process similar to that discussed above for our proposed interstate rate caps. We seek comment on this proposal.

130. *Consistency with Section 276 of the Act.* We propose to find that our international rate cap proposals are consistent with section 276 of the Act's "fair compensation" provisions for the same reasons we propose to find our interstate rate cap proposals to be consistent with section 276. We seek comment on this proposal.

C. Other Issues

131. *Ancillary Service Fee Caps*. We seek comment on whether our ancillary services fee caps should be lowered or otherwise modified.[308] What data should we collect or rely upon in making such a determination? If we were to revise our ancillary service fee caps, how frequently should we revise those caps? Additionally, should we limit the third-party transaction fees that providers may pass through to consumers and, if so, what should those limits be?[309]

132. *Additional Data Collection*. Pursuant to our annual reporting requirements, inmate calling services providers must submit data on their operations, including their current rates as well as their current ancillary service charge amounts.[310] To ensure that providers' interstate and international rates as well as their ancillary service charges for inmate calling services are just and reasonable, we invite comment on whether we should require providers to submit additional data—including cost data—in the future and, if so, what data we should collect.[311] Should we use the Second Mandatory Data Collection as the starting point in designing any additional data collection?[312] If so, how should we modify that collection to ensure that we have sufficient information to meaningfully evaluate providers' reported cost data and methodology? Or should we follow a different approach, such as that used in the

[307] *See* Worth Rises Request at 2 (explaining that "in-person visits to jail and prisons have been prohibited in order to minimize the transfer of COVID-19 to incarcerated populations").

[308] *See* Public Interest Advocates July 29, 2020 *Ex Parte* at 4-5; NCIC July 28, 2020 *Ex Parte* at 2.

[309] *See* NCIC July 28, 2020 *Ex Parte* at 2 (requesting that we amend section 68.6020(b)(2) of our rules to specify that third-party transaction fees for single-call and related services "not exceed either the Automated Payment Fee or Live Agent Fee (as applicable)") (emphasis omitted); *id.* at 1 (alleging that "certain ICS providers continue to charge between $9.99 and $14.99 for the completion of a single call" by "tacking on a third-party transaction fee that far exceeds the transaction fees" permissible under section 64.6020(b)(2)).

[310] *See* 47 CFR § 64.6060(a).

[311] *See* Public Interest Advocates July 29, 2020 *Ex Parte* at 4-5.

[312] *See 2015 ICS Order*, 30 FCC Rcd at 12862, para. 198; *2019 Data Collection Public Notice*, 34 FCC Rcd at 515 (adopting a Second Mandatory Data Collection requiring that inmate calling services providers report direct costs, location, type (i.e., jail, prison), average daily population, number of calls by method of payment, minutes of use by method of payment, revenue, and site commissions for a five-year period at a facility level and total inmate calling services costs, direct costs, revenues, and site commissions at the company level).

First Mandatory Data Collection?[313] If we were to adopt a new data collection, we seek comment on whether we should require providers to update their responses to that data collection periodically. What would be the relative benefits and burdens of a periodic data collection versus another one-time data collection? If we were to require a periodic collection, how frequently should we collect the relevant data? For example, would a biennial or triennial collection covering multiple years better balance those benefits and burdens than an annual collection?

133. We also seek comment on how we can ensure that inmate calling services providers submit accurate data to the Commission.[314] The Public Interest Advocates express concern that "some providers, such as GTL, appear to submit inflated data to the Commission with impunity."[315] It is imperative that inmate calling services providers proceed in good faith and with absolute candor in their interactions with the Commission. Our rules already require providers to certify annually that the information in their Annual Reports is "true and accurate" and that they are in compliance with our inmate calling services rules.[316] Should any subsequent data collection contain a similar certification requirement? While we take this opportunity to again remind inmate calling services providers of their duty to provide complete and accurate information in required reports and responses, we seek comment on additional measures we can take. Additionally, we seek comment on how the Commission can ensure that providers update their filings if they discover any material error or misrepresentation in their reported data and responses. Finally, we seek comment on whether there are any other methods of obtaining accurate cost data upon which to base just and reasonable rates that does not require reliance on service providers' self-reported cost data. We ask commenters to provide a detailed explanation of how any such data may otherwise be obtained.

134. *Marketplace Developments*. We invite comment on how our regulation of interstate and international inmate calling services should evolve in light of marketplace developments to better accommodate the needs of incarcerated people while ensuring that providers are reasonably compensated for providing inmate calling services. Our rules restrict providers to charging consumers on a per-minute basis, an approach that evolved from the need of payphone operators to collect payment from each of their transient users. We invite comment on whether we should change our rules to recognize industry innovations, such as emerging pay models where local jails pay for calls in a manner "more similar to the modern marketplace" and thus seek contracts on a per-line rather than a per-minute basis.[317] Would such contracts reduce the amounts incarcerated people and their loved ones pay to stay connected? Are there other innovations that we should consider in revising our inmate calling services rules?

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[313] *See 2013 ICS Order*, 28 FCC Rcd at 14172-73, paras. 124-26 (adopting the First Mandatory Data Collection requiring inmate calling services providers to report actual and forecasted costs, separately for jails and prisons, and at a holding company level, for specific categories of costs, including telecom costs, equipment costs, security costs, and other specified costs, as well as information on site commissions, minutes of use, number of calls, and number of facilities, and information on charges for ancillary services).

[314] *See* Public Interest Advocates July 29, 2020 *Ex Parte* at 4.

[315] *Id.* at 4.

[316] *See* 47 CFR § 64.6060; *see also* FCC Form 2301(b) – Inmate Calling Services Annual Certification Form. The certifying senior executive must have "first-hand knowledge of the accuracy and completeness of the information provided" in the provider's Annual Report and also "acknowledge that failure to comply with the [Commission's inmate calling services rules] may result in civil or criminal prosecution." *Id.*

[317] Public Interest Advocates July 29, 2020 *Ex Parte* at 5-6. For example, some jurisdictions are paying for the costs of calling just as they pay for other utilities such as electricity and water. The Public Interest Advocates state that when New York City negotiated a contract that was not billed on a per-minute rate, the overall cost of telephone service decreased substantially, from $10 million annually to approximately $2.5 million annually, while call volume increased 40 percent. *Id.* at 6.

135. Similarly, we invite comment on how overall fees and per-minute rates for inmate calling services affect consumers and on whether alternative rate structures would reduce total consumer costs.[318] The Public Interest Advocates assert that inmate services providers pressure correctional facilities to sign contracts that allow the providers to provide additional items or services such as tablets and video calling in addition to inmate calling services.[319] We invite comment on the prevalence of this type of "bundling" practice and on the effects these types of practices may have on rates and fees for inmate calling services.

136. *Disability Access*. We seek comment on the needs of incarcerated people with disabilities,[320] including the types of Telecommunications Relay Services access technologies that these individuals require.[321] Section 225 of the Act requires every common carrier that provides voice services to offer access to Telecommunications Relay Service within their service areas.[322] Currently, the Commission requires two forms of Telecommunications Relay Services: TTY-based Telecommunications Relay Services and speech-to-speech services.[323] Thus, all common carriers must make available or ensure the availability of these types of Telecommunications Relay Services. We remind inmate calling services providers of their obligations to ensure the availability and provision of these forms of Telecommunications Relay Services.[324] Although the Commission currently requires these two types of Telecommunications Relay Services, we recognize that newer forms of these services, such as Internet Protocol Captioned Telephone Service, Video Relay Service, and Real-Time Text, have come to the market in part as a result of "ongoing technology transitions from circuit switched to IP-based networks."[325] To further our mandate to ensure the availability of Telecommunications Relay Services, we seek comment broadly on the needs of incarcerated people with hearing or speech disabilities. Do these individuals have adequate access to Telecommunications Relay Services? Considering technological developments, what forms of Telecommunications Relay Services should inmate calling services providers make available, and what can the Commission do to facilitate that?

V. PROCEDURAL MATTERS

137. *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

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[318] *See* Public Interest Advocates July 29, 2020 *Ex Parte* at 6.

[319] *See id.* at 5.

[320] *See id.* at 6.

[321] Telecommunications Relay Services are "[t]elephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication using voice communication services by wire or radio." 47 CFR § 64.601(a)(42). There are several types of Telecommunications Relay Services, including Captioned Telephone Service, Internet Protocol Captioned Telephone Service, Internet Protocol Relay Service, Speech-to Speech Relay Service, TTY Relay Service, and Video Relay Service. *See generally* FCC, *Telecommunications Relay Services (TRS)*, https://www.fcc.gov/trs (last visited July 30, 2020).

[322] 47 U.S.C. § 225(c). In addition, Title IV of the Americans with Disabilities Act requires the Commission to ensure the availability of Telecommunications Relay Services to individuals with hearing and speech disabilities in the United States. *Id.* § 225(b)(1).

[323] 47 CFR § 64.603(a).

[324] *2015 ICS Order*, 30 FCC Rcd at 12875, para. 227.

[325] *Transition from TTY to Real-Time Text Technology et al.*, CG Docket No. 16-145, GN Docket No. 15-178, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13568, 13570, para. 3 (2016). In 2016, the Commission amended its rules to permit wireless carriers to support Real-Time Text in lieu of TTY technology. *Id.* at 13569, para. 1.

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).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.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 445 12th Street, SW, 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. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

138. 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 the *Fourth Further Notice of Proposed Rulemaking* in order to facilitate our internal review process.

139. *People with Disabilities*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

140. *Ex Parte Presentations.* The proceeding that this *Fourth Further Notice of Proposed Rulemaking* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[326] 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).

141. 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 his or her prior comments, memoranda, or

[326] 47 CFR §§ 1.1200 *et seq.*

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

142. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

143. *Initial Regulatory Flexibility Act Analysis*. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[327] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Fourth Further Notice of Proposed Rulemaking* (*Fourth Further Notice*). The IRFA is set forth in Appendix D. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Fourth Further Notice*. The Commission will send a copy of the *Fourth Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[328] In addition, the *Fourth Further Notice* and the IRFA (or summaries thereof) will be published in the Federal Register.[329]

144. *Supplemental Final Regulatory Flexibility Act Analysis*. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to this *Report and Order on Remand*.[330] The FRFA is set forth in Appendix C.

145. *Paperwork Reduction Act Analyses*. *Final Paperwork Reduction Act Analysis*. This *Report and Order on Remand* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[331] In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA).[332]

146. *Initial Paperwork Reduction Act Analysis*. This *Fourth Further Notice of Proposed Rulemaking* may propose new or modified information collections subject to the PRA requirements. If the Commission adopts any new or modified information collection requirements, they will be submitted to OMB for review under section 3507(d) of the PRA. The Commission, as part of its continuing effort to reduce paperwork burdens, invites OMB, the general public, and other federal agencies to comment on any new or modified information collection requirements contained in this *Fourth Further Notice of Proposed Rulemaking*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In

[327] *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).

[328] *See* 5 U.S.C. § 603(a).

[329] *Id*.

[330] *See* 5 U.S.C. § 604. 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. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

[331] The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[332] Small Business Paperwork Relief Act of 2002, Public Law 107-198; *see* 44 U.S.C. § 3506(c)(4),

addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

VI. ORDERING CLAUSES

147. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 201(b), 218, 220, 276, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 218, 220, 276, and 403, this *Report and Order on Remand* and this *Fourth Further Notice of Proposed Rulemaking* ARE ADOPTED.

148. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 201(b), 218, 220, 276, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 218, 220, 276, and 403, that the amendments to the Commission's rules as set forth in Appendix A ARE ADOPTED, effective 30 days after publication of a summary in the Federal Register.

149. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on this *Fourth Further Notice of Proposed Rulemaking* on or before 30 days after publication of a summary of this *Fourth Further Notice of Proposed Rulemaking* in the Federal Register and reply comments on or before 60 days after publication of a summary of this *Fourth Further Notice of Proposed Rulemaking* in the Federal Register.

150. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking*, including the Initial and Supplemental Final Regulatory Flexibility Analysis, to the Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

151. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis and the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons set forth above, the Federal Communications Commission amends Part 64, subpart FF of Title 47 of the Code of Federal Regulations as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

   AUTHORITY: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 262, 276, 403(b)(2)(B), (c), 616, 620, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

2. Section 64.6000 is revised to read as follows:

§ 64.6000 Definitions.

As used in this subpart:

(a) *Ancillary Service Charge* means any charge Consumers may be assessed for, or in connection with, the interstate or international use of Inmate Calling Services that are not included in the per-minute charges assessed for such individual calls. Ancillary Service Charges that may be assessed are limited only to those listed in subparagraphs (a)(1)-(5) of this section. All other Ancillary Service Charges are prohibited. For purposes of this definition, "interstate" includes any Jurisdictionally Mixed Charge, as defined in paragraph (u) of this section.

* * *

(b) *Authorized Fee* means a government authorized, but discretionary, fee which a Provider must remit to a federal, state, or local government, and which a Provider is permitted, but not required, to pass through to Consumers for or in connection with interstate or international Inmate Calling Service. An Authorized Fee may not include a markup, unless the markup is specifically authorized by a federal, state, or local statute, rule, or regulation.

* * *

(n) *Mandatory Tax or Mandatory Fee* means a fee that a Provider is required to collect directly from consumers, and remit to federal, state, or local governments. A Mandatory Tax or Fee that is passed through to a consumer for, or in connection with, interstate or international Inmate Calling Services may not include a markup, unless the markup is specifically authorized by a federal, state, or local statute, rule, or regulation;

* * *

(t) *Site Commission* means any form of monetary payment, in-kind payment, gift, exchange of services or goods, fee, technology allowance, or product that a Provider of Inmate Calling Services or affiliate of a Provider of Inmate Calling Services may pay, give, donate, or otherwise provide to an entity that operates a correctional institution, an entity with which the Provider of Inmate Calling Services enters into an agreement to provide Inmate Calling Services, a governmental agency that oversees a correctional facility, the city, county, or state where a facility is located, or an agent of any such facility.

(u) *Jurisdictionally Mixed Charge* means any charge Consumers may be assessed for use of Inmate Calling Services that are not included in the per-minute charges assessed for individual calls and that are assessed for, or in connection with, uses of Inmate Calling Service to make such calls that have interstate or international components *and* intrastate components that are unable to be segregated at the time the charge is incurred.

3. Section 64.6010 is removed and reserved and now reads as follows:

§ 64.6010 [Reserved]

4. Section 64.6020(a) is revised to read as follows:

§ 64.6020 Ancillary Service Charge.

(a) No Provider of interstate or international Inmate Calling Services shall charge an Ancillary Service Charge other than those permitted charges listed in § 64.6000(a).

5. Section 64.6030 is revised to read as follows:

§ 64.6030 Inmate Calling Services interim rate cap.

No provider shall charge a rate for interstate Collect Calling in excess of $0.25 per minute, or a rate for interstate Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of $0.21 per minute. These interim rate caps shall remain in effect until permanent rate caps are adopted and take effect.

6. Section 64.6050 is revised to read as follows:

§ 64.6050 Billing-related call blocking.

No Provider shall prohibit or prevent completion of an interstate or international Collect Calling call or decline to establish or otherwise degrade interstate or international Collect Calling solely for the reason that it lacks a billing relationship with the called party's communications service provider, unless the Provider offers Debit Calling, Prepaid Calling, or Prepaid Collect Calling for interstate and international calls.

7. Section 64.6060 is revised to remove and reserve section (a)(4) as follows:

§ 64.6060 Annual reporting and certification requirement.

(a) * * *

(4) [Reserved]

8. Section 64.6070 is revised to read as follows:

§ 64.6070 Taxes and fees.

No Provider shall charge any taxes or fees to users of Inmate Calling Services for, or in connection with, interstate or international calls, other than those permitted under § 64.6020, and those defined as Mandatory Taxes, Mandatory Fees, or Authorized Fees.

9. Section 64.6080 is revised to read as follows:

§ 64.6080 Per-Call or Per-Connection Charges.

No Provider shall impose a Per-Call or Per-Connection Charge on a Consumer for any interstate or international calls.

10. Section 64.6090 is revised to read as follows:

§ 64.6090 Flat-Rate Calling.

No Provider shall offer Flat-Rate Calling for interstate or international Inmate Calling Services.

11. Section 64.6100 is revised to read as follows:

§ 64.6100 Minimum and maximum Prepaid Calling account balances.

(a) No Provider shall institute a minimum balance requirement for a Consumer to use Debit or Prepaid Calling for interstate or international calls.

(b) No Provider shall prohibit a consumer from depositing at least $50 per transaction to fund a Debit or Prepaid Calling account that can be used for interstate or international calls.

APPENDIX B

Proposed Rules

For the reasons set forth above, the Federal Communications Commission proposes to amend Part 64, subpart FF of Title 47 of the Code of Federal Regulations as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 262, 276, 403(b)(2)(B), (c), 616, 620, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

2. Section 64.6010 is revised to read as follows:

§ 64.6010 Interstate and International Inmate Calling Services rate caps.

(a) No Provider shall charge, in any Jail it serves, a per-minute rate for interstate Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of $0.16.

(b) No Provider shall charge, in any Prison it serves, a per-minute rate for interstate Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of $0.14.

(c) No Provider shall charge, in any Prison or Jail it serves, a per-minute rate for International Calls in excess of the applicable interstate rate set forth in paragraphs (a) and (b) plus the amount that the provider must pay its underlying international service provider for that call on a per-minute basis.

APPENDIX C

Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *2014 ICS Notice*.[2] The Commission sought written public comment on the proposals in that *Notice*, including comment on the IRFA.[3] The Commission did not receive comments directed toward the IRFA. Thereafter, the Commission issued a Final Regulatory Flexibility Analysis (FRFA) conforming to the RFA.[4] This Supplemental FRFA supplements that FRFA to reflect the actions taken in the Report and Order on Remand (*Remand Order*) and conforms to the RFA.[5]

A. Need for, and Objectives of, the Order on Remand

2. The *Remand Order* adopts rules segregating ancillary service charges provided in connection with inmate calling services into interstate and intrastate components in response to a remand from the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). It also amends the Commission's rule regarding mandatory pass-through taxes and fees in light of a second remand from the D.C. Circuit. Finally, it revises certain of the Commission's other inmate calling services rules to comport with the D.C. Circuit's decisions in those cases, and reinstates the Commission's rule providing an ancillary service charge cap for single-call services.

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

3. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

4. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

5. 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 rules adopted herein.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[8] A "small business concern" is one

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[1] *See* 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-602, 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, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd at 13170 (2014) (*2014 ICS Notice*).

[3] *See id.* at 13235, Appx., para. 2.

[4] *Rates for Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12944-49 (2015) (*2015 ICS Order or Notice*).

[5] *See* 5 U.S.C. § 604.

[6] 5 U.S.C. § 604(a)(3).

[7] 5 U.S.C. § 601(6).

[8] 5 U.S.C. § 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

(continued….)

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 Small Business Administration (SBA).[9]

6. *Small Businesses*. Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.[10]

7. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[11] According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.[12] Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more.[13] Thus, under this size standard, the majority of firms can be considered small.

8. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[14] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[15] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[16] Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the Commission's action.

9. *Incumbent Local Exchange Carriers (incumbent LECs*). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[17] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[18] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[19] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the Commission's action.

(Continued from previous page)
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."

[9] 15 U.S.C. § 632.

[10] *See* SBA, Office of Advocacy, "Frequently Asked Questions," available at http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf (last visited June 22, 2020).

[11] 13 CFR § 121.201, NAICS Code 517110.

[12] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110" (issued Nov. 2010).

[13] *See id.*

[14] 13 CFR § 121.201, NAICS Code 517110.

[15] *See* Trends in Telephone Service, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.4 (Sept. 2010) (Trends in Telephone Service).

[16] *See id.*

[17] *See* 13 CFR § 121.201, NAICS Code 517110.

[18] *See* Trends in Telephone Service at Table 5.3.

[19] *See id.*

10. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[20] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[21] The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

11. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[22] According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[23] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[24] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[25] In addition, 72 carriers have reported that they are Other Local Service Providers.[26] Of the 72, 70 have 1,500 or fewer employees and two have more than 1,500 employees.[27] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the Commission's action.

12. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[28] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[29] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[30] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the Commission's action.

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[20] 5 U.S.C. § 601(3).

[21] *See* Letter from Jere W. Glover, Chief Counsel to Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a); *see also* 5 U.S.C. § 601(2). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 CFR § 121.102(b).

[22] *See* 13 CFR § 121.101, NAICS Code 517110.

[23] *See* Trends in Telephone Service at Table 5.3.

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See* 13 CFR § 121.101, NAICS Code 517110.

[29] *See* Trends in Telephone Service at Table 5.3.

[30] *See id.*

13. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[31] According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[32] Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.[33] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the Commission's action.

14. *Toll Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[34] According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[35] Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.[36] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the Commission's action.

15. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[37] According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[38] Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.[39] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the Commission's action.

16. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers, a group that includes inmate calling services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[40] According to Commission data,[41] 535 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 531 have 1,500 or fewer employees and four have more than 1,5000 employees.[42] Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the Commission's action.

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[31] *See* 13 CFR § 121.101, NAICS Code 517911.

[32] *See* Trends in Telephone Service at Table 5.3.

[33] *See id.*

[34] *See* 13 CFR § 121.101, NAICS Code 517911.

[35] *See* Trends in Telephone Service at Table 5.3.

[36] *See id.*

[37] *See* 13 CFR § 121.101, NAICS Code 517110.

[38] *See* Trends in Telephone Service at Table 5.3.

[39] *See id.*

[40] *See* 13 CFR § 121.101, NAICS Code 517110

[41] *See* Trends in Telephone Service at Table 5.3.

[42] *See id.*

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

17. *Recordkeeping, Reporting, and Certification*. The Order on Remand requires inmate calling services providers to properly identify whether ancillary services associated with inmate calling services are interstate, intrastate, or jurisdictionally mixed. To the extent those ancillary services are interstate or jurisdictionally mixed, the provider must comply with fee caps or limits previously adopted by the Commission. The *Remand Order* also requires inmate calling services providers to not mark up mandatory taxes or fees passed on to consumers of interstate or international inmate calling services, and places an ancillary service charge cap on single-call services.[43]

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

18. The RFA requires an agency to describe any significant, specifically small business, 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."[44]

19. The FRFA that the Commission previously issued in connection with the *2015 ICS Order* addressed in full the steps taken to minimize the economic impact or small entities and the significant alternatives considered.[45]

Report to Congress:

20. The Commission will send a copy of the *Remand Order*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[46] In addition, the Commission will send a copy of the *Remand Order*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Remand Order* and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.[47]

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[43] *See supra* Part III.

[44] 5 U.S.C. § 603(c)(1)-(c)(4).

[45] *2015 ICS Order*, 30 FCC Rcd at 12948-49.

[46] 5 U.S.C. § 801(a)(1)(A).

[47] *See id.* § 604(b).

APPENDIX D

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Fourth Further Notice of Proposed Rulemaking (*Further Notice*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of this *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Further Notice* and the IRFA (or summaries thereof) will be published in the Federal Register.[3]

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

2. In this *Further Notice*, the Commission seeks comment on its proposal to address the broken inmate calling services marketplace. The Commission proposes to reduce rate caps from the current interim rate caps to $0.14 per minute for all interstate inmate calling services calls from prisons and to $0.16 per minute for all interstate inmate calling services from jails. This rate cap reduction is designed to ensure that inmate calling services providers will have the opportunity to recover their costs—including their indirect costs—of providing interstate inmate calling services. Additionally, the proposed interstate rate caps include an allowance for the recovery of correctional facility costs that are legitimately related to the provision of inmate calling services. The Commission anticipates that its actions will have long-term and meaningful impacts on incarcerated individuals and their families while promoting competition in the inmate calling services marketplace.

3. The Commission also proposes to cap inmate calling services rates for international calls on a facility basis. Our proposal to adopt a rate cap formula that permits a provider to charge an international inmate calling services rate up to the sum of the provider's per-minute interstate rate cap for the inmate's facility plus the amount that the provider must pay its underlying international service provider for that call on a per minute basis has the benefits of simplicity and ease of administration. It would allow inmate calling services providers to recover the additional costs they incur to resell international calling services, yet should result in substantial reductions in international calling rates for incarcerated individuals and their families.

B. Legal Basis

4. The legal basis for any action that may be taken pursuant to the *Fourth Further Notice* is contained in sections 1, 2, 4(i)-(j), 201(b), 218, 220, 276, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 218, 220, 276, and 403.

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

5. 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 rule revisions, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has

[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] *See* 5 U.S.C. § 603(a).

[3] *Id*.

[4] *See* 5 U.S.C. § 601(6).

the same meaning as the term "small-business concern" under the Small Business Act.[5] 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.[6]

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.[7] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[8] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.[9]

7. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[10] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[11] Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[12]

8. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[13] U.S. Census Bureau data from the 2017 Census

[5] *See* 5 U.S.C. § 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."

[6] *See* 15 U.S.C. § 632.

[7] *See* 5 U.S.C. § 601(3)-(6).

[8] *See* SBA, Office of Advocacy, "What's New With Small Business," https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf (June 2020).

[9] *Id*.

[10] 5 U.S.C. § 601(4).

[11] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations—Form 990-N (e-Postcard), "Who must file,"https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[12] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. These data do not include information for Puerto Rico.

[13] 5 U.S.C. § 601(5).

of Governments[14] indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[15] Of this number there were 36,931 general purpose governments (county[16], municipal and town or township[17]) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts[18] with enrollment populations of less than 50,000.[19] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[20]

9. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."[21] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies

[14] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[15] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* Table 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[16] *See* U.S. Census Bureau, 2017 Census of Governments - Organization, Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[17] *See* U.S. Census Bureau, 2017 Census of Governments - Organization, Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[18] *See* U.S. Census Bureau, 2017 Census of Governments - Organization, Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[19] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[20] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

[21] *See* U.S. Census Bureau, *2017 NAICS Definition, NAICS Code 517311 "Wired Telecommunications Carriers,"* https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

having 1,500 or fewer employees.[22] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.[23] Of this total, 3,083 operated with fewer than 1,000 employees.[24] Thus, under this size standard, the majority of firms in this industry can be considered small.

10. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.[25] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[26] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year.[27] Of that total, 3,083 operated with fewer than 1,000 employees.[28] Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

11. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.[29] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[30] U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year.[31] Of this total, 3,083 operated with fewer than 1,000 employees.[32] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.[33] Of this total, an estimated 1,006

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[22] *See* 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

[23] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012*. https://data.census.gov/cedsci/table?q=EC1251&hidePreview=true&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&lastDisplayedRow=28#.

[24] *Id.* The largest category provided by the census data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

[25] *See* U.S. Census Bureau, *2017 NAICS Definition, NAICS Code 517311 "Wired Telecommunications Carriers,"* https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

[26] *See* 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

[27] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* NAICS Code 517110, https://data.census.gov/cedsci/table?q=EC1251&hidePreview=true&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&lastDisplayedRow=28#.

[28] *Id.* The largest category provided by the census data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

[29] *See* U.S. Census Bureau, *2017 NAICS Definition, NAICS Code 517311 "Wired Telecommunications Carriers,"* https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

[30] *See* 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

[31] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012*, NAICS Code 517110. https://data.census.gov/cedsci/table?q=EC1251&hidePreview=true&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&lastDisplayedRow=28#.

[32] *Id.* The largest category provided by the census data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

[33] *See Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

have 1,500 or fewer employees.[34] Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

12. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field" of operation.[35] The SBA's Office of Advocacy contents that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[36]

13. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.[37] U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[38] Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

14. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers.[39] The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[40] U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.[41] Of that number, 3,083 operated with fewer than 1,000

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[34] *Id*.

[35] 5 U.S.C. § 601(4).

[36] *See* Letter from Jere W. Glover, Chief Counsel to Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 601(4). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 CFR § 121.102(b).

[37] 13 CFR § 121.201 (NAICS Code 517311).

[38] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012*, NAICS Code 517110. https://data.census.gov/cedsci/table?q=EC1251&hidePreview=true&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&lastDisplayedRow=28#.

[39] *See* U.S. Census Bureau, *2017 NAICS Definition, NAICS Code 517311 "Wired Telecommunications Carriers,"* https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

[40] *See* 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

[41] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). https://data.census.gov/cedsci/table?q=EC1251&hidePreview=true&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&lastDisplayedRow=28#.

employees.[42] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[43] Of this total, an estimated 317 have 1,500 or fewer employees.[44] Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

15. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.[45] Under that size standard, such a business is small if it has 1,500 or fewer employees.[46] Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities.

16. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[47] According to Commission data, 881 carriers have reported that they are engaged in the provisions of toll resale services.[48] Of this total, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.[49] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

17. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code is for Wired Telecommunications Carriers.[50] The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[51] According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[52] Of this total, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.[53]

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[42] *Id*. The largest category provided by the census data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

[43] *See Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*). https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[44] *Id*.

[45] U.S. Census Bureau, *2012 NAICS Definition*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012 (last visited June 17, 2020).

[46] 13 CFR § 121.201 (NAICS Code 517911).

[47] *See* 13 CFR § 121.201, NAICS Code 517911 (previously 517310).

[48] *See* Trends in Telephone Service at Table 5.3.

[49] *See id.*

[50] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[51] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[52] *See* Trends in Telephone Service at Table 5.3.

[53] *See id.*

Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by our action.

18. *Payphone Service Providers (PSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers, a group that includes inmate calling services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[54] According to Commission data,[55] 535 carriers have reported that they are engaged in the provision of payphone services. Of this total, an estimated 531 have 1,500 or fewer employees and four have more than 1,500 employees.[56] Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

19. *All Other Telecommunications.* The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[57] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[58] Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[59] The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $35 million or less.[60] For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.[61] Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49, 999,999.[62] Thus, the Commission estimates that the majority of "All Other Telecommunications" firms potentially affected by our action can be considered small.

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

20. Whereas the current interim rate caps differentiated between prepaid and debit calls and collect calls, the Commission proposes to adopt identical interstate rate caps for prepaid, debit, and collect calls.[63] These proposed rates differentiate between facility types, proposing a rate cap for jails that is $0.02 per minute higher than the rate cap we propose for prisons.[64] The Commission also proposes to adopt, for the first time, rate caps for international inmate calling services calls. The Commission

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[54] *See* 13 CFR § 121.201, NAICS code 517311 (previously 517110).

[55] *See* Trends in Telephone Service at Table 5.3.

[56] *See id.*

[57] *See* U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code "517919 All Other Telecommunications", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017.

[58] *Id.*

[59] *Id.*

[60] *See* 13 CFR § 121.201, NAICS code 517919.

[61] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517919, https://data.census.gov/cedsci/table?q=EC1251&hidePreview=true&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&lastDisplayedRow=28#.

[62] *Id.*

[63] *Fourth Further Notice*, Part IV.A.

[64] *Id.*

recognizes that these proposed changes to the rate cap structure will likely require providers to make adjustments to their billing systems. The Commission proposes a 90-day transition period to alleviate any burden on providers associated with this change and to allow providers sufficient time to make the necessary changes.[65]

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

21. 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.[66] We expect to consider all of these factors when we receive substantive comment from the public and potentially affected entities.

22. The Commission's proposed rate caps differentiate between prisons and jails to account for differences in costs incurred by inmate calling services providers servicing these different facility types.[67] The Commission believes the proposed rate caps will ensure that inmate calling services providers serving jails, which may be smaller, higher-cost facilities, and larger prisons, which often benefit from economies of scale, can both recover their legitimate inmate calling services-related costs. To further ease the burdens on providers serving smaller jails, the Commission proposes to adopt higher allowances for correctional facility costs for inmate calling services providers serving smaller jails if the record supports such allowances.[68] The Commission's proposed rate caps also include $0.02 allowance for costs correctional facilities incur that are directly related to the provision of inmate calling services and that represent a legitimate cost for which providers of inmate calling services may have to compensate facilities. The Commission recognizes that for contracts covering only smaller jails, the facility costs at these particular facilities may exceed $0.02 per minute, and seeks comment on whether the rate caps should adopt higher allowances for correctional facility costs for such contracts.[69]

23. The Commission recognizes that it cannot foreclose the possibility that in certain limited instances, the proposed rate caps may not be sufficient for certain providers to recover their legitimate costs for providing inmate calling services. To minimize the burden on providers, the Commission proposes a waiver process that allows providers to seek relief from its rules at the facility or contract level if they can demonstrate that they are unable to recover their legitimate inmate calling services-related costs at that facility or for that contract. If the provider demonstrates that its higher costs at the facility or contract level are legitimately related to the provision of inmate calling services, the Commission proposes to raise each applicable rate cap to a level that enables the provider to recover the costs of providing inmate calling services at that facility. We seek comment on this proposed waiver process, and on whether the same waiver process should be employed with respect to the proposed international rate caps.

24. Given the significant reduction in interstate inmate calling services rates proposed by the Commission, some providers may need to re-negotiate their existing contracts with correctional facilities. To provide inmate calling services providers adequate time to make necessary adjustments to their

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[65] *Id.*

[66] 5 U.S.C. § 603(c)(1)-(4).

[67] *Fourth Further Notice*, Part IV.A.

[68] *Id.* at Part IV.A.3.

[69] *Id.*

contracts, and to mitigate any other burdens that may result from implementing the proposed interstate and international rate caps, the Commission proposes to allow a 90-day transition period for the proposed rate caps to take effect.[70] The Commission seeks comment on the length of this transition period and whether it will afford inmate calling services providers and correctional facilities sufficient time to implement the proposed rate caps.

25. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *Further Notice* and this IRFA, in reaching its final conclusions and promulgating rules in this proceeding. Specifically, the Commission will conduct a cost-benefit analysis as part of this proceeding and consider the public benefits of any such requirements it might adopt to ensure that they outweigh any impact on small business.

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

26. None.

[70] *Id.* at Part IV.A.

APPENDIX E

Analysis of Responses to the Second Mandatory Data Collection

1. In response to the Second Mandatory Data Collection,[1] 13 providers of inmate calling services submitted data to the Commission (*see* Table 1).[2] The collected data included information on numerous characteristics of the providers' contracts, such as:

- Whether the contract was for a prison or a jail;
- The average daily inmate population (average daily population) of all the facilities covered by the contract;
- The total number of calls made annually under the contract, broken out by paid and unpaid, with paid calls further broken out by debit, prepaid, and collect;
- Total call minutes; call minutes broken out by paid and unpaid; interstate, intrastate, and international; and prepaid, debit, and collect calls;
- Inmate calling services revenues, broken out by prepaid, debit, and collect;
- Automated payment revenues and paper bill or statement revenues, earned under the contract (live operator revenues were not collected);
- Site commissions paid to facility operators under the contract; and
- Each provider's inmate calling services costs in total, exclusive of site commissions.

2. Inmate calling services costs are for inmate calling services only, and thus do not include costs for lines of business such as video visitation services, or fees passed through to callers, such as credit card processing fees. While providers generally reported at least some inmate calling services costs at the level of the contract, and more rarely at the level of the facility, each did this differently. In this Appendix, we define costs reported at the level of the contract or facility respectively as the direct costs of the contract or facility.

[1] *Rates for 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. 98 (2015); *see Wireline Competition Bureau Reminds Providers of Inmate Calling Services of the March 1, 2019 Deadline for Data Collection Responses*, WC Docket No. 12-375, Public Notice, 34 FCC Rcd 515 (WCB 2019).

[2] The 13th provider, Talton, is excluded from Table 1 for the reasons discussed further below.

Table 1 – Selected Statistics of Responding Providers

Provider	# of Contracts	ADP	ADP (% of Total)	Paid Minutes (millions)	Paid Minutes (% of Total)	Per-Paid Minute Cost
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Industry	**2,935**	**2,246,940**	**100.0**	**7,821**	**100.0**	**0.089**

Note: Average daily population was reported for only 2,846 out of 2,935 contracts.

3. *Dropped observations*. We removed one contract reported by {[ ]} that had a per-minute cost of $7.48 as this is most likely a data error. If the per-minute cost of providing this contract was $7.48, then that implies an implausible error in bidding on the part of the contracting provider. In 2018, 379,155 total minutes were reported as delivered on this contract, while only 6,137 were reported as paid minutes, which in and of itself is implausible. These paid minutes earned revenues of $184, for an average per-minute price of $0.03, implying the contract incurred an annual loss of $2,824,705.[3]

4. We also excluded two contracts that are not comparable to the average correctional facility because they are managed by Immigration and Customs Enforcement (ICE) and the Federal Bureau of Prisons (BOP).[4] The ICE contract was the only contract held by Talton, so dropping this contract eliminated Talton from our dataset thus resulting in Table 1 showing only 12 providers. Before dropping the BOP contract, we allocated a share of GTL's overhead to the BOP contract as described below. This resulted in a final dataset of 2,935 contracts, accounting for 2.2 million incarcerated individuals and 7.8 billion paid minutes.

5. *Adjustments to the underlying data*. Unless otherwise noted, we accepted the filers' data and related information "as provided" (i.e., without any modifications). We applied three processes to ultimately geocode 3,784 or 88% of the 4,319 filed facilities. Geocoding is a process of associating longitude and latitude coordinates to a facility's address to conduct geographic analyses. We first used

[3] Staff discussed this particular contract with the reporting provider and such provider conceded that it was likely an error but because it related to a contract from an inmate calling services provider it had previously acquired, it had no basis to determine what the actual costs associated with that contract were. As a result, we do not include the contract in our analysis.

[4] *See* Description and Justification for Talton Communication, Inc.'s Mandatory Data Collection Report, WC Docket No. 12-375, at 1 (filed Mar. 1, 2019) (stating that Talton "does not bill or collect revenues nor do we incur the cost of service"); *see also* Global Tel*Link, FCC Form 2301(a) – Inmate Calling Services Annual Report, WC Docket No. 12-375, Tab I.a Narrative (3), Row 102 (filed Apr. 1, 2020) (Confidential version) (GTL Annual Report) ({[ ]}).

ArcMap software version 10.8 to geocode 3,321 or 77% of the 4,319 filed facilities.[5] We then took a random sample of 170, or 17%, of the 998 addresses we were unable to geocode, and where possible, corrected them manually. We were able to geocode 164 of these 170 addresses. Finally, we developed a Python script to clean up the remaining addresses—which we then manually checked—and were able to geocode 299 additional facilities this way. In instances of contracts with multiple facilities, we were unable to geocode the relevant facilities where a filer only provided a single address.[6] In some instances a mailing address was reported.[7] If this was different from the facility's physical address and the address correction process did not detect this error, then the mailing address was used.

6. *Unit of analysis*. Our analysis was typically conducted at the contract level. This approach is consistent with our view that the contract is the primary unit of supply for inmate calling services. That is, providers bid on contracts, rather than facilities (though in many instances the contract is for a single facility). This approach is also consistent with how the data were submitted. The Commission requested information to be submitted for each correctional facility where a provider offers inmate calling services, and some key variables—for example, the quantity of calls and minutes of use—were reported by facility. However, even though over 90% of contracts were reported as representing a single facility, most filers do not maintain all of the data we requested by facility in the ordinary course of their business. As a result, in some instances, contracts were reported that covered multiple facilities without any breakout of those facilities. In other cases, some facility-level data was not reported. Examples of the latter include average daily inmate population and credit card processing costs. In any event, because we required providers to cross-reference their contracts with the facilities they covered, we were able to group facilities by contract, which facilitated our ability to conduct our analysis at the contract level.

7. *Cost allocation*. General and administrative costs are, by definition, not directly attributable to any contract. In this Appendix, the difference between a filer's total costs and its direct costs (i.e., the costs it reported at the level of the contract or facility) is termed "overheads." Each filer applied its own accounting practices in reporting overheads. For example, GTL reported bad debt as its only direct cost, all the way down to the facility. All of its other costs thus appear as if they were overheads. By contrast, one provider allocated all of its costs using the number of phones that it had installed down to the level of the contract, implying it had no overheads. Other firms allocated some costs using a fully distributed cost key, such as shares of minutes; others used revenue shares which typically have no relation to why costs are incurred.

8. To provide a common basis of comparison, and to allow a focus on per-minute rates, we allocated overheads among each provider's contracts in proportion to the contracts' shares of the provider's total minutes. We used total minutes at both the contract level and the provider level, rather than paid minutes, because all minutes cost something to provide, regardless of whether they generate any revenue.

9. Once all costs were allocated, the per-minute cost of a contract was calculated by dividing the total cost of each contract by its quantity of paid minutes. Paid minutes were used because those are the minutes that providers rely on to recover their costs. *See* Table 2.

[5] We used the geocoding database ArcGIS StreetMap Premium North America (2020 Release 1).

[6] *See, e.g.*, Revised Description and Justification for Global Tel*Link Corporation's Mandatory Data Collection Report, WC Docket No. 12-375, at para. 21 (filed May 19, 2020) (Redacted for Public Inspection) (GTL Revised Description and Justification).

[7] *Id*.

Table 2 – Contract Per-Minute Costs by Facility Type Using an All-Minute Cost Allocation Key

Metric (2018 Data Only)	Prisons	Jails
Mean	$0.091	$0.084
Standard Deviation	$0.040	$0.062
Mean + One Standard Deviation	$0.131 (= $0.091 + $0.040)	$0.146 (= $0.084 + $0.062)
# of Outliers (Mean + 1 Std. Dev.)	9/131 contracts; 6.9%	193/2,804 contracts; 6.9%
Mean + Two Standard Deviations	$0.171 (= $0.091 + $0.040 x 2)	$0.208 (= $0.084 + $0.062 x 2)
# of Outliers (Mean + 2 Std. Dev.)	1/131 contracts; 0.8%	50/2,804 contracts; 1.8%

10. *Choosing among cost allocation keys*. After looking at six possible cost allocation keys that the data would allow us to implement—call minutes, average daily population, calls, revenues, contracts, and facilities—we found call minutes to provide the best allocator.

11. The primary aim of a cost allocation key is to find a reasonable way of attributing costs, in this case to contracts, that either cannot be directly attributed, such as true overheads, or that, while conceptually could be attributed to a specific contract, cannot be attributed based on how providers' accounts are kept. Such a key must be likely to reflect cost causation and result in rates that demand can bear.[8] On this basis, we are able to narrow our focus to a call minute key or call key. We chose call minutes over calls on the basis that a call minute key is the natural choice given the ubiquity of call minute pricing.

12. Tables 3 and 4 provide information about the distribution of contract costs per minute under each of the six possible keys. The average daily population, contract, and facility cost allocation keys result in many contracts with implausible contract-level per-minute costs. For example, the average daily population cost allocation key shows an average prison contract cost per paid minute of nearly $0.58 and a jail contract per paid minute cost of nearly $7. By contrast, average call revenue per paid minute including automated payment and paper bill/statement revenues is $0.148 for prison contracts, and $0.360 for jail contracts. (Ideally live operator service revenues would also be accounted for, but we do not have these data.) The average daily population cost allocation key shows 10% of prison contracts have costs in excess of $0.319 per paid minute. Yet, 99% of prison contracts have an average paid minute rate (the sum of inmate calling services, automated payment, and paper bill or statement revenues divided by all paid minutes) of less than $0.319.[9] Given that such contracts are surely mutually beneficial to both the provider and the correctional facility, they must generate enough revenues to cover costs. Just as implausibly, four jail contracts would have per-minute costs in excess of $240 (*see* Table 4), and three would have per-minute costs in excess of $480 (not shown in Table 4). Again, by contrast, when using the call minute key, no prison contracts have per-minute costs above $0.226, and the highest jail per-minute cost is $1.460.

13. The average daily population key is additionally problematic because average daily population data are often inaccurate,[10] and—in the case of 89 contracts—simply missing from the

[8] *See, e.g.*, David Heald, *Contrasting Approaches to the 'Problem' of Cross Subsidy*, 7 Management Accounting Research 53, at 55, 56-57, 68 (1996), https://pdfs.semanticscholar.org/885e/67a7e7df2e76fb89abd1b817bdb722c651d1.pdf.

[9] The equivalent number for jail contracts is 37% have costs above $0.333 (the 90th percentile per paid minute cost for jail contracts with an average daily population cost allocation key), which looks more reasonable, but there is no reason to think allocating costs by average daily population should work for prisons, but not jails.

[10] Multiple providers reported that they do not know the average daily population of the facilities they serve but were able to provide estimates at the contract level. *See, e.g.*, GTL Revised Description and Justification at 10 ("GTL's response to the Data Collection provides data on a contract-by-contract basis."); Description and Justification for Securus Technologies, Inc.'s Mandatory Data Collection Report, WC Docket No. 12-375, at 2 (filed Mar. 1, 2019) (Redacted for Public Inspection) ("In the ordinary course of business, Securus does not track ADP at the facility level. Securus only tracks ADP at the contract/customer level."); Description and Justification for

(continued….)

providers' responses. A cost allocation key based on the number of facilities is also problematic as facility data were not reported for many contracts with multiple facilities.

14. The cost allocations based on contracts and facilities are even more unrealistic, with both displaying a mean contract per-minute cost in excess of $40 (*see* Table 3).

Table 3 – The Distribution of Contract Per-Minute Costs by Facility Type Using Various Cost Allocators

Allocation Key	Facility Type	Mean	Std. Dev.	Percentiles						
				1st	10th	25th	50th	75th	90th	99th
Minutes	Jail	0.084	0.062	0.009	0.027	0.055	0.073	0.118	0.137	0.262
	Prison	0.091	0.040	0.028	0.041	0.051	0.121	0.122	0.127	0.166
ADP	Jail	6.974	236.854	0.000	0.022	0.044	0.075	0.132	0.333	10.495
	Prison	0.577	4.184	0.000	0.030	0.043	0.072	0.145	0.319	12.806
Calls	Jail	0.107	0.097	0.009	0.025	0.052	0.090	0.132	0.197	0.448
	Prison	0.100	0.091	0.009	0.026	0.047	0.089	0.120	0.172	0.440
Revenue	Jail	0.135	0.121	0.007	0.027	0.059	0.107	0.172	0.266	0.522
	Prison	0.100	0.170	0.013	0.032	0.040	0.063	0.114	0.206	0.257
Contracts	Jail	42.658	1,005.685	0.006	0.034	0.090	0.280	1.190	4.906	221.786
	Prison	3.869	37.995	0.003	0.008	0.019	0.055	0.232	0.915	26.031
Facilities	Jail	41.284	1,002.770	0.006	0.034	0.085	0.237	1.034	4.446	158.262
	Prison	3.786	37.116	0.003	0.012	0.022	0.060	0.227	0.894	25.429

(Continued from previous page)
CenturyLink Public Communications, Inc.'s Mandatory Data Collection Report, WC Docket No. 12-375, at 3 (filed Mar. 1, 2019) (Redacted for Public Inspection) (explaining that CenturyLink "provides inmate calling services through procurements conducted by states and local correctional authorities. It does not develop, and does not have, cost data specific to individual correctional facilities." This is true more broadly, including for ADP, which CenturyLink only reported at the level of the contract.).

Table 4 – Contract Per-Minute Costs by Facility Type Using Various Cost Allocators

Allocation Key	Facility Type	Mean + One Std. Dev.	Total Contracts	Contracts Below	Contracts Above	Contracts Above (%)
Minutes	Jail	0.146	2,804	2,610	194	6.9
	Prison	0.131	131	122	9	6.9
ADP	Jail	243.828	2,804	2,800	4	0.1
	Prison	4.761	131	129	2	1.5
Calls	Jail	0.204	2,804	2,558	246	8.8
	Prison	0.191	131	122	9	6.9
Revenue	Jail	0.256	2,804	2,441	363	12.9
	Prison	0.270	131	130	1	0.8
Contracts	Jail	1,048.343	2,804	2,794	10	0.4
	Prison	41.864	131	130	1	0.8
Facilities	Jail	1,044.054	2,804	2,794	10	0.4
	Prison	40.902	131	130	1	0.8

15. Although a revenue cost allocation key may be used for certain accounting purposes, a revenue key is inappropriate for regulatory purposes because revenue is not a cost driver. While costs can be expected to increase with quantity sold, revenues do not always increase with quantity sold, and this can lead to perverse effects. Quantity sold increases as price falls. Starting from a price where no sales are made, revenues also increase as prices fall. However, at some point as prices fall, revenues also begin to fall: the revenue gain from new sales made at the lower price is smaller than the revenue loss incurred due to the lower price as applied to all purchases that would have been made at the higher price. In that circumstance, holding other things constant, a revenue cost allocator would allocate less costs to a contract with a greater sales volume, contrary to cost causation. This also means a revenue key can reinforce monopoly prices. The exercise of market power can result in higher revenues than would be earned in a competitive market. In that circumstance, holding other things constant, a revenue allocation key would allocate more costs to monopolized services than competitive ones.[11]

16. This leaves call minutes and calls as potential cost allocation keys. A call minute cost allocation key is the natural choice for setting per-minute inmate calling services rates. It is common in inmate calling services supply to charge per-minute rates, and not per call rates, even if sometimes the first minute has a different rate from subsequent rates.

17. *Subcontracts*. Some inmate calling services providers subcontract some or all of their contracts to a second provider.[12] This raises the question of how to deal with overhead costs in the case of subcontractors. We take an approach that may double count some overhead costs, as we cannot identify what fraction of the subcontractors' overhead costs are captured in what they charge the prime contractor.

[11] *See, e.g.*, Heald, *supra* note 6, at 68.

[12] In 2018, of CenturyLink's {[ ]} inmate calling services contracts, we have data on {[ ]} which were subcontracted (CenturyLink has {[ ]} subcontracts with {[ ]} but {[ ]} did not report data for these contracts), and a third contract has no reported subcontractor; additionally, {[ ]} employed a subcontractor for all of its {[ ]} contracts.).

18. The reporting of costs for shared contracts varies by provider. Where the prime contractor only reported the cost of supplying the broadband connection on its contracts, while the subcontractor reported the costs of servicing the facilities (installation, maintenance, etc.), we aggregated their costs. Because the reported costs represent the provision of different services, we do not believe these contracts have costs that were double-counted. Other providers operating as prime contractors reported all costs (including subcontractors' costs). Where their associated subcontractor did not file reports on the subcontracts, we used the costs as reported by the prime contractor. However, where the associated subcontractors reported their costs, we removed their direct costs to avoid counting them twice.

19. The subcontracting filers were also the main inmate calling services suppliers on other contracts, raising the question of how to avoid double counting the allocation we made for overhead costs for their subcontracts. Leaning toward overstating costs, overhead on each shared contract was assigned using the methodology described above (i.e., a shared contract is allocated the overhead of both providers that report the contract). Afterwards, the two observations were aggregated into one and placed under the name of the firm that is the primary contract holder.

20. Inclusion of the overhead costs reported by the subcontractors overstates the cost recovering rate if, as is likely, they charge a markup over their direct costs. The markup would be part of the prime contractor's reported expenses, and to avoid double counting, we would need to remove the markup from our calculations. We cannot determine the amount of this markup, however. One approach would be to assume the markup matched our overhead cost allocation. In that case, the overhead costs of a subcontractor that are allocated to a subcontract would not be counted as they would be captured in the prime contractor's costs. However, if the markup exceeded this amount, we would still be double counting costs, while if the markup was less than this amount, then we would be understating costs. Table 5, when compared with Table 3, shows the impact of assuming that the markup matches our overhead cost calculation on the distribution of per-minute costs to be small.

Table 5 – Contract Per-Minute Costs by Facility Type Using Various Cost Allocators Adjusted to Avoid Double Counting of Subcontractor Overheads

Allocation Key	Facility Type	Mean	Std. Dev	Percentiles						
				1st	10th	25th	50th	75th	90th	99th
Minutes	Jail	0.084	0.062	0.009	0.027	0.055	0.073	0.118	0.136	0.262
	Prison	0.090	0.041	0.023	0.039	0.050	0.121	0.122	0.127	0.166
ADP	Jail	6.977	236.896	0.000	0.022	0.044	0.075	0.132	0.333	10.495
	Prison	0.579	4.200	0.000	0.029	0.041	0.068	0.145	0.330	12.806
Calls	Jail	0.106	0.097	0.009	0.025	0.052	0.089	0.132	0.196	0.448
	Prison	0.100	0.091	0.009	0.026	0.047	0.088	0.120	0.173	0.440
Revenue	Jail	0.134	0.122	0.007	0.027	0.058	0.107	0.171	0.266	0.522
	Prison	0.099	0.171	0.013	0.029	0.037	0.053	0.114	0.206	0.257
Contracts	Jail	42.672	1,005.864	0.006	0.034	0.088	0.279	1.187	4.906	221.786
	Prison	3.898	38.140	0.003	0.007	0.019	0.053	0.232	0.922	26.031
Facilities	Jail	41.297	1,002.949	0.006	0.034	0.082	0.236	1.033	4.446	158.262
	Prison	3.813	37.259	0.003	0.011	0.022	0.058	0.227	0.897	25.429

21. If we were to remove all subcontractor overhead costs allocated to CenturyLink's contracts, the average per-minute cost of CenturyLink's contracts would decrease from {[ ]}. If we removed only half of the overhead, this would result in an average per-minute cost of {[ ]}.

22. *Ancillary Revenues and Cost Recovery*. Inmate calling services revenues do not include ancillary revenues. However, in many instances, ancillary revenues contribute toward cost recovery. We distinguish two sources of ancillary revenues. The first are those earned from passthrough fees, that is fees that are required to no more than match the costs the provider pays to a third party. Examples are credit card processing revenues and third-party transaction revenues. The costs that are passed through to incarcerated people in this manner are not included in inmate calling service costs. Thus, they net out of any cost-recovery estimation, and here we consider them no further.

23. The second are revenues earned on three ancillary services: automated payments, paper billing and statements, and live agent services. The costs of these services are included in the providers' inmate calling costs. Thus, matching revenues with costs requires that the revenues from these sources also be included. However, it is likely the data we collected do not fully match relevant ancillary revenues with reported inmate calling services costs because we did not collect data on live agent service revenues and because we do not know how providers allocated costs of shared services and revenues to inmate calling services. As an example, consider a payment account which must be used to purchase inmate calling services, as well as commissary services, tablet access, and other services. If usage fees are charged to set up or to deposit money, then the provider may not have reported these in their ancillary revenues, considering them not to solely be attributable to inmate calling services. However, they may have allocated some or all the costs of the payment system to inmate calling services.

24. Table 6 shows for each provider, and for all providers, inmate calling revenues, automated payment revenues, paper billing and account revenues, the sum of these three revenues, inmate calling costs, and the difference between those summed revenues and inmate calling costs.

Table 6 – Inmate Calling Services Revenues and Costs by Provider and for Industry (in $ millions)

Provider	ICS Revenues	APF Revenues	PBF Revenues	Total Revenues	Total Costs	Difference
ATN	{[					]}
CenturyLink	{[					]}
Correct	{[					]}
CPC	{[					]}
Crown	{[					]}
GTL	{[					]}
ICSolutions	{[					]}
Legacy	{[					]}
NCIC	{[					]}
Pay Tel	{[					]}
Prodigy	{[					]}
Securus	{[					]}
Industry	**1,096,391**	**116,124**	**410**	**1,212,926**	**697,321**	**515,605**

25. Table 7 shows for each provider, and for all providers, split by prisons and jails, the contract mean of total per paid minute revenues (that is, the mean for each contract of the sum of inmate calling revenues, automated payment revenues, paper billing and account revenues divided by paid minutes), the contract mean of per paid minute costs, the contract mean of per paid minute direct costs. At least three of the direct cost per minute entries are misleading: Legacy and NCIC report zero direct costs, while GTL only reports bad debt as a direct cost, the result being GTL's direct costs per minute are {[ ]}. In actuality, these three providers almost certainly have substantially larger direct costs and hence substantially larger direct costs per minute.

Table 7 – Inmate Calling Services per Minute Revenues and Costs by Provider and for Industry by Jail and Prison ($)

Provider	Facility Type	Contract Mean Revenues Per Paid Minute	Contract Mean Costs Per Paid Minute	Contract Mean Direct Costs Per Paid Minute
ATN	Jail	{[		]}
CenturyLink	Jail	{[		]}
Correct	Jail	{[		]}
CPC	Jail	{[		]}
Crown	Jail	{[		]}
GTL	Jail	{[		]}
ICSolutions	Jail	{[		]}
Legacy	Jail	{[		]}
NCIC	Jail	{[		]}
Pay Tel	Jail	{[		]}
Prodigy	Jail	{[		]}
Securus	Jail	{[		]}
Industry	**Jail**	**0.360**	**0.084**	**0.024**
CenturyLink	Prison	{[		]}
GTL	Prison	{[		]}
ICSolutions	Prison	{[		]}
Legacy	Prison	{[		]}
NCIC	Prison	{[		]}
Securus	Prison	{[		]}
Industry	**Prison**	**0.148**	**0.091**	**0.010**

26. Table 8 shows the number and percent of contracts for which various revenue estimates cover total and direct costs.[13] We project, at the proposed rates and assuming ancillary service revenues remain the same, 98% of contracts would recover their total costs as allocated (or 99%, if the 10% discount of GTL's costs is applied). This is likely an underestimate since many providers' costs may be overstated, and the full range of ancillary fees that contribute toward recovering inmate calling service costs are not reported.

[13] The number of Legacy, NCIC, and GTL contracts that cover direct costs as reported in the third last and last columns are overstated for the reasons just given.

Table 8 – Number and Percent of Contracts for Which Various Revenue Estimates Cover Total and Direct Costs

Provider	Facility Type	Total Costs Covered by Ancillary Revenues	Total Costs Covered by Projected ICS Revenues	Direct Costs Covered by Projected ICS Revenues	Total Costs Covered by Projected ICS Revenues and Ancillary Revenues	Direct Costs Covered by Projected ICS Revenues and Ancillary Revenues
ATN	Jail	{[				]}
CenturyLink	Jail	{[				]}
Correct	Jail	{[				]}
CPC	Jail	{[				]}
Crown	Jail	{[				]}
GTL	Jail	{[				]}
ICSolutions	Jail	{[				]}
Legacy	Jail	{[				]}
NCIC	Jail	{[				]}
Pay Tel	Jail	{[				]}
Prodigy	Jail	{[				]}
Securus	Jail	{[				]}
Industry	**Jail**	**547 (20%)**	**2677 (95%)**	**2768 (99%)**	**2759 (98%)**	**2795 (100%)**
CenturyLink	Prison	{[				]}
GTL	Prison	{[				]}
ICSolutions	Prison	{[				]}
Legacy	Prison	{[				]}
NCIC	Prison	{[				]}
Securus	Prison	{[				]}
Industry	**Prison**	**0 (0%)**	**123 (94%)**	**131 (100%)**	**129 (98%)**	**131 (100%)**

APPENDIX F

Sensitivity Testing: Additional Statistical Analysis of Cost Data

1. We analyzed inmate calling services providers' responses to the Second Mandatory Data Collection to determine whether certain characteristics of inmate calling services contracts could be shown to have a meaningful association with contract costs on a per-minute basis as reported by providers. In this analysis, we considered characteristics such as the average daily population of the facilities covered by the contract, the type of those facilities (prison or jail), and rurality of those facilities. If such an association exists, it might be appropriate to set rates that vary according to the variables we identified.

2. We used a statistical method called Lasso to explore: (a) which variables are good predictors of per-minute contract costs and (b) the likelihood that a given contract is in the top 5% of contracts on a cost per minute basis (hereinafter referred to as an outlier).[1] Lasso identifies predictors of an outcome variable—the logarithm of costs per minute, or outlier status in this case—by trading off goodness of fit against model parsimony. Lasso retains a set of predictors that optimally balance the quality of the prediction against the complexity of the model, as measured by the number of predictors, and is especially useful in situations like this where many variables, and interactions among those variables, could predict an outcome of interest. We found the main predictors of both costs per minute and outlier contracts to be provider identity and the state where the contract's correctional facilities were located. We also found that whether the facility is a prison or jail is a predictor of costs per minute, although weaker than provider identity and state. Finally, we found a wide range of other variables have less or essentially no predictive power.

3. We chose the inmate calling services contract as the unit of observation for our analysis for two reasons. First, providers bid for contracts rather than individual facilities, so the contract is the level at which commercial decisions are made. Second, many contracts cover more than one facility but providers did not report data on those facilities separately, which precludes any analysis at the facility level.[2] We focused on the logarithm of costs as the dependent variable. The contract variables that we considered in our analysis are as follows:

- The identity of the inmate calling services provider;
- The state(s) in which correctional facilities covered by a contract are located;
- The Census division(s) and region(s) in which facilities covered by a contract are located;
- The type of facility covered by the contract (prison or jail);
- An indicator for joint contracts (i.e., contracts for which an inmate calling services provider subcontracts with another inmate calling services provider);
- Contract average daily population;
- Contract average daily population bins (average daily population ≤ 25, average daily population ≤ 50, average daily population ≤ 100, average daily population ≤ 250, average daily population ≤ 500, average daily population ≤ 1000, average daily population ≤ 5000);
- Rurality of the facilities covered by the contract (rural, if all the facilities covered by the

[1] *See generally* Robert Tibshirani, *Regression Shrinkage and Selection via the Lasso*, 58 Journal of the Royal Statistical Society Series B (Methodological) 267 (1996), https://rss.onlinelibrary.wiley.com/doi/epdf/10.1111/j.2517-6161.1996.tb02080.x.

[2] For example, this commonly occurred in the filings of both GTL and CenturyLink. For example, GTL's {[

]}.

Contracts where the separate facilities were not reported would distort any facility-based analysis.

contract are located in a census block designated by the Bureau of Census as rural, and urban, if all facilities were located in a census block not designated as rural, or mixed if the contract covered facilities designated as rural and not rural); and

- Various combinations (i.e., multiplicative interactions) among the above variables.

4. *Lasso and costs per minute*. The Lasso results indicate economically significant differences in costs per minute primarily across providers and states. The provider and state variables retained by Lasso as predictors of cost explain approximately 71% of the variation in costs across contracts. Lasso results also indicate less important differences in costs per minute by facility type (prison or jail), average daily population and average daily population-related variables, and rurality. When retained as predictors by Lasso, these variables explain approximately 1% more of the variation in costs than the state and provider variables alone. The differences in costs measured by provider identity may reflect either systematic differences in costs across providers, or systematic differences in the way costs are calculated and reported by providers. The differences in cost measured by the state variables may reflect statewide differences in costs arising from different regulatory frameworks or other state-specific factors.

5. One concern arising in the analysis is that a group of contracts representing a significant fraction—about 11%—of observations contained insufficient information to ascertain the rurality of facilities included in a contract.[3] As a result, in our baseline model that includes all contracts, we interpret the effect of the rurality variables as differences from the contracts for which we did not have rurality information. To ensure that this is a sound approach, we checked using a sample selection model that the factors that may be associated with a contract not having sufficient rurality information are not significantly correlated with costs.[4] We also ran our analysis using only the contracts that contain rurality information and found similar Lasso results to our baseline model.

6. We also explored the differences in the costs reported by the top three providers by size using a double selection Lasso model.[5] We focus on GTL, ICSolutions, and Securus because these firms' costs explain the bulk of industry costs. These providers supply {[ ]} of all inmate calling services contracts and cover approximately {[ ]} of all incarcerated individuals (*see* Table 1).[6] These three firms are also more suitable for making cross-firm comparisons because they do not subcontract the provision of their inmate calling service contracts to a third party, and because they are the largest three of the five providers that service prisons, covering {[ ]} of all prison contracts.[7] The results suggest that GTL's costs are—all other things equal—{[

[3] *See generally* Appx. E (discussing the geocoding process).

[4] We estimated a Heckman sample selection model where selection is for observations that contain rurality information. The dependent variable and controls in this model were chosen to be the same as the ones in Lasso. We found that the coefficient on the inverse Mills ratio is not significant at reasonable levels of significance (p-value is 0.22), allaying potential concerns about sample selectivity. *See generally* James J. Heckman, *Sample Selection Bias as a Specification Error*, 47 Econometrica 153 (1979).

[5] *See generally* Alexandre Belloni, Victor Chernozhukov & Christian Hansen, *Inference on Treatment Effects After Selection Among High-Dimensional Controls*, 81 Review of Economic Studies 608 (2014). Double selection Lasso is a method of statistical inference that uses Lasso for the dependent variable and for the variables of interest using a set of common controls; simple Lasso only selects predictors, without the possibility of statistical inference afforded by double selection.

[6] These shares may in fact represent a significant understatement of their industry share because they are often subcontractors. For example, {[

]} instead for considering this part of our analysis considering factors that may impact costs.

[7] Of the remaining three prison providers, {[ ]}.

]}. These cost differences are statistically significant at confidence levels greater than 99.99%.[8]

7. The results of the double selection Lasso model also indicate that—all other things equal—the costs of providing inmate calling services are approximately 18% greater in jails than in prisons; this difference is statistically significant at confidence levels greater than 99.99%.[9]

Table 1 – Inmate Calling Services Providers Ranked by Number of Contracts

Provider	Contracts	Prison Contracts	Facilities	Average Daily Population*
{[				]}
{[				]}
{[				]}
{[				]}
{[				]}
{[				]}
{[				]}
{[				]}
{[				]}
{[				]}
{[				]}
{[				]}
Industry Total	**2,935**	**131**	**3,668**	**2,246,940**

*Notes: * Average daily population was reported for only 2,846 contracts.*

8. *Lasso and outlier status*. We also analyzed the drivers of the likelihood of a contract to be included in the top 5% of costs per minute using logit Lasso.[10] The results were similar to those for cost per minute: provider and state variables were retained by Lasso as the principal predictors of a contract's likelihood of being a cost outlier.

[8] When the sample is restricted to the contracts with no missing rurality information, GTL's costs are—all other things equal—approximately {[
]}.

[9] For the sample restricted to contracts with complete rurality information, this estimate is approximately 17%, also statistically significant at confidence levels greater than 99.99%.

[10] Similar to the linear Lasso employed for cost per minute, logit Lasso selects an optimal set of predictors for the likelihood of a contract to be an outlier in the sense defined above.

APPENDIX G

Estimating a Discount Factor to Remove Market Rents from GTL's Reported Costs

1. GTL reports costs that are high relative to the industry and its nearest peers, Securus and ICSolutions.[1] GTL reports a ratio of total costs to total paid minutes of {[ ]}, more than a third higher than that of the industry, $0.089. This ratio is more than twice the same ratio for both that of Securus, {[ ]}, and that of ICSolutions, {[ ]}.[2] Similarly, the mean per paid minute cost of a GTL contract, {[ ]}, is more than a third higher than that of the industry, $0.91, more than double that of Securus, {[ ]}, and nearly triple that of ICSolutions, {[ ]}.[3] GTL's costs are nearly three times greater than those of Securus and nearly twice those of ICSolutions when we control for confounding factors.[4] This is particularly surprising given the economies of scale and scope GTL should be able to take advantage of, and given its success in the industry.[5] Certain aspects of GTL's approach to measuring costs may partially explain why its costs appear so high.[6] One is in how it derived its capital expenses. GTEL Holdings, Inc., and Subsidiaries (hereafter GTLH) included a Consolidated Financial Statement for 2018 as part of GTL's response to the Second Mandatory Data Collection.[7] Based on our analysis of the financial information set forth in that Financial Statement, we find that a 10% reduction of GTL's inmate calling services costs as reported in that response is necessary to remove market rents incorporated into these costs as explained below.

2. Market forces tend to result in a purchase price for an acquired firm reflecting the market's expectation of the present value of the expected future stream of net cash flows that the purchase would bring. This is especially the case with two or more informed purchasers, and a rational seller.[8] To the extent the expected net cash flows that determine the purchase price are greater than what would be expected if the purchaser, using the purchased assets, faced effective competition, the purchaser expects to earn market rents. In that case, since the purchase price is capitalized on the purchaser's balance sheet, these market rents are also capitalized. The capitalized value of these market rents is periodically reflected as a depreciation or amortization expense in determining earnings on an income statement. Thus, to the extent there are such market rents in GTLH's capital base, these rents would be reflected in the expenses GTL reported in its Second Mandatory Data Collection response, likely in part accounting for GTL's reported costs appearing so far above those of other providers. For ratemaking purposes, however, any such rents should be excluded when evaluating costs, as they would not be earned in a

[1] On nearest peers, *see generally* Appx. E.

[2] *See* Appx. E, Table 1.

[3] *See id.* Table 7.

[4] *See generally* Appx. F.

[5] *See supra* para. 95.

[6] *See, e.g., supra* para. 83.

[7] Revised Description and Justification for Global Tel*Link Corporation's Mandatory Data Collection Report, WC Docket No. 12-375, at 148-72 (Consolidated Financial Statements as of and for the years Ended December 31, 2018 and 2017 and Independent Auditors' Report) (Confidential) (filed May 19, 2020) (GTLH 2017-2018 Consolidated Financial Statements).

[8] A profit-maximizing firm seeking to acquire another firm would pay no more than its estimate of the present value of the expected future stream of net cash flows the purchase would bring. The selling party would not be willing to sell at a price less than what it could obtain from another purchaser. Nor would the selling party be willing to sell at a price less its estimate of the present value of the expected future stream of net cash flows it could obtain if it continued with the asset rather than selling it.

competitive market, and our rate-cap setting efforts are designed to approximate competitive market conditions.

3. GTLH's balance sheet reflects the cumulative total of the remaining unamortized value of "goodwill" associated with GTLH's various acquisitions at different points in time. GTLH records goodwill at the time it acquires a new firm as the difference between the purchase price and its estimate of the fair value of acquired tangible and identifiable intangible assets, net of assumed liabilities at the time of acquisition.[9] Thus, goodwill should reflect these market rents—the amount over and above what one could earn from disposing of the underlying assets separately at a fair market rate, rather than together in a whole as part of the ongoing business.

4. Thus, for the purpose of developing a regulated, cost-based rate for inmate calling services, we exclude goodwill-related expenses from GTL's reported expenses to approximate costs in competitive marketplace rather than the locational monopoly environment within which GTL operates. To identify the share of GTL's reported expenses that represents goodwill-related expenses, we multiply the share of goodwill in GTLH's assets, as reported in GTLH's consolidated balance sheet, by the share of capital expenses in GTLH's total expenses reported in the consolidated statement of operations and consolidated income (losses) for 2018.[10] GTL is a direct subsidiary of GTLH and, as explained in the Description and Justification accompanying GTL's Second Mandatory Data Collection response, GTL's reported inmate calling services costs are directly derived from the costs reported on the balance sheet for that consolidated entity.[11] GTLH's 2018 balance sheet reports goodwill, net of amortization of {[ ]}. GTLH's goodwill estimate has been declining since January 1, 2014 as GTLH has been amortizing goodwill over a 10-year period.[12]

5. GTLH's income statement for 2018 shows that {[ ]} of GTLH's expenses were attributable to capital. To identify the share of capital expenses in GTL's reported expenses, we rely on GTLH's 2018 statement of operating expenses in the consolidated statement of operations and consolidated income,[13] dividing total expenses related to capital by total expenses. Total expenses excluding interest are {[ ]}.[14] The sum of depreciation and amortization expenses plus interest expenses is {[ ]}. This is the amount of GTLH's total expenses that can be attributed to capital. Thus, the share of expenses, including interest expenses that can be attributed to capital is {[ ]}.[15]

6. The product of these two percentages is 10.9% (= {[ ]}). We find that this provides a reasonable approximation of the market rents included in GTL's reported inmate calling

[9] GTLH 2017-2018 Consolidated Financial Statements at 9.

[10] *Id.* at 2-3, 4-5. We rely on balance sheet information for 2018 because our analysis in the *Further Notice*, Part V, relies on data for 2018 in calculating proposed inmate calling services rate caps. *See also* Revised Description and Justification for Global Tel*Link Corporation's Mandatory Data Collection Report, WC Docket No. 12-375, at para. 15 (Redacted for Public Inspection) (GTL Revised Description and Justification).

[11] *Id.* ("GTL relied on the audited financial statements of its parent (GTEL Holdings, Inc.) and other financial information to determine its aggregate or 'total' ICS costs.").

[12] GTLH 2017-2018 Consolidated Financial Statements at 10.

[13] GTLH 2017-2018 Consolidated Financial Statements at 4.

[14] *Id.* This is the sum of four items: cost of revenues, {[ ]}.

[15] Staff also performed more detailed calculations to account for income tax treatment of capital expenses and other items on GTLH's financial statements but these other calculations do not yield materially different estimates.

services costs. This estimate is stable over time: the same methodology yields discount factors of 10.9% in 2014; 11.3% in 2015; 11.1% in 2016; and 10.9% in 2017.[16] Although these discount factors are closer to 11% than 10% for each year from 2014 through 2018, in order to be conservative, we use a discount factor of 10%. We find that this is an appropriate cost disallowance to remove the impact of market rents on the expenses that GTL reports in its Second Mandatory Data Collection response.

7. We also considered alternate methods, such as estimating the amount of market rents in proportion to historical market valuations, or in proportion to an estimate of GTL's total intangibles, or by some combination of such approaches. However, these other methods require data, such as market valuation and total intangibles, that are either unavailable, unhelpful because of the timing issues, or not well-suited to ratemaking purposes.

[16] GTL Revised Description and Justification at 26-29 (Consolidated Financial Statements as of and for the years Ended December 31, 2015 and 2014, and Independent Auditors' Report); *id.* at 54-57 (Consolidated Financial Statements as of and for the Years Ended December 31, 2016 and 2015, and Independent Auditors Report); *id.* at 81 (Consolidated Financial Statements as of and for the Years Ended December 31, 2017 and 2016, and Independent Auditors Report).

APPENDIX H

Analysis of Site Commission Payments

1. We propose to incorporate a $0.02 allowance for recovery of correctional facility costs directly related to the provision of inmate calling services. Although the Commission has no direct information on the level of costs incurred by the correctional facilities related to the provision of inmate calling services, we can estimate these costs by comparing the relative per-minute costs for contracts with and without site commissions, as shown in Table 1.

Table 1 – Site Commissions and Per-Minute Costs

Facility Type	Site Commission	Mean	SD	Mean + SD	Number of Contracts		
					Below	Above	Total
Jails	No Commission Paid	0.094	0.085	0.179	277	10	287
	Commission Paid	0.080	0.056	0.137	2,323	194	2,517
	All Jails	**0.082**	**0.060**	**0.142**	**2,619**	**185**	**2,804**
Prisons	No Commission Paid	0.087	0.033	0.120	39	2	41
	Commission Paid	0.083	0.035	0.118	83	7	90
	All Prisons	**0.084**	**0.034**	**0.118**	**122**	**9**	**131**
All Facilities	No Commission Paid	0.093	0.081	0.174	318	10	328
	Commission Paid	0.080	0.056	0.136	2402	205	2,607
	All Facilities	**0.082**	**0.059**	**0.141**	**2,741**	**194**	**2,935**

2. It is reasonable that the higher per-minute costs for contracts without site commissions reflect, at least in part, give-and-take negotiations in which inmate calling services providers agree to incur additional inmate calling services-related costs in exchange for not having to pay site commissions. The lowest third of Table 1 shows a $0.013 difference in mean costs per minute reported by providers between contracts without site commissions ($0.093) and contracts with site commissions ($0.080). We round upwards to allow for individual contracts for which this matters more than the average contract, and thereby reach our $0.02 per minute allowance for correctional facility costs. Site commissions appear less critical for prisons than jails, with prison contracts without commissions earning on average only $0.004 more than per paid minute costs, while for jails this difference is $0.014. However, again to ensure we do not harm unusual prison contracts, we apply the same $0.02 markup for both prisons and jails.

3. The interstate rate caps for prisons and jails we propose include the $0.02 per minute allowance for reasonable facility costs. Accordingly, our proposed rate caps would allow inmate calling services providers to recover their direct costs of providing interstate inmate calling services to each correctional facility it serves. The rate caps we propose would also allow providers to reimburse correctional authorities for the costs they reasonably incur in making their facilities available for inmate calling services, while making reasonable contributions to providers' indirect costs.

STATEMENT OF
CHAIRMAN AJIT PAI

Re: *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375.

Dig into the record of this proceeding, and you will find these comments from the wife of an incarcerated man. She described how the cost of prison phone calls impacts her family:

My loved one calls me once a day for 20 minutes each day. This is the only time we have to update each other on our lives, to comfort him and let him know that he's not being left behind, to encourage him and his continued behavioral improvement, that this change he's attempting is appreciated and worth the difficulty and effort. This costs $130.20 [a month] for a mother whose husband is incarcerated, and who has children[] who need to know their father despite him being inside. This amount translates to groceries for the month. When you don't have much, you have to choose between feeding your kids, or encouraging your husband, and allowing your kids to know their father.

This is not right. No parent should have to make such a choice.

Recognizing the critical need to ensure that the incarcerated and their loved ones can stay connected, the Commission has previously made several attempts to address the rates and charges for inmate calling services (ICS). But the U.S. Court of Appeals for the D.C. Circuit has twice rejected and remanded those efforts and issued four stays along the way (once in 2014 and thrice in 2016). Judge Edwards' opinion for the court rejecting the Commission's 2015 decision on this issue held that the decision was a "fundamental misreading" of the law, "lack[ed] justification in the record," was "devoid of reasoned decisionmaking[,] and [was] thus arbitrary and capricious."

My aim in this proceeding has long been and continues to be simple: to do what we can do as a matter of law and what we should do as a matter of justice. We meet that aim today. We follow the law and the facts to respond to the court's directives, and we propose to comprehensively reform the ICS rates within our jurisdiction.

To begin with, we address the court's remand on ancillary service charges. These are separate fees that are not included in the per-minute rates that ICS providers charge for individual calls. The D.C. Circuit directed us to consider whether ancillary service charges can be separated into interstate and intrastate components, so that the latter can be excluded from the reach of our rules (since we don't have jurisdiction over intrastate calls). In today's Order, we find that, as a practical matter, these charges generally can't be separated, except in a limited number of cases. As a result, ICS providers are generally subject to the FCC's rules when it comes to ancillary service charges. This is good news for the incarcerated and those they call. Under today's ruling, ICS providers generally can't charge incarcerated individuals and their families any ancillary service charges other than the types allowed by our rules. And they can't charge ancillary service fees that exceed our applicable fee caps. This will mean fewer big ancillary fees added to bills and fewer headaches and heartaches for those who have to pay them.

In the accompanying Further Notice, we propose to decrease the current rate caps for interstate ICS. Specifically, we propose to lower our current interstate rate caps of $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls to $0.14 per minute for debit, prepaid, and collect calls from prisons and $0.16 per minute for debit, prepaid, and collect calls from jails. This would be a significant cut of 24-44%. We make this proposal based on extensive FCC staff analysis of the most recent cost data submitted by ICS providers. And we use a methodology that addresses the flaws identified by the D.C. Circuit underlying the Commission's 2015 and 2016 rate caps. Some may argue that these proposed caps should be reduced even further. To them I would say that I look forward to the record that develops. Should the facts warrant, this agency will, once again, follow the law and apply rigorous economic analysis to the data in setting final interstate rate caps. That is a path that will deliver phone justice and survive judicial scrutiny. For remember: Phone justice for the incarcerated and their families is a reduction in rates that will stand up in court, not yet another decision that gets struck down and leaves those least able to pay more vulnerable than ever.

Finally, in this Further Notice, we propose to cap rates for international ICS, which remain uncapped today.

I'm proud that we're taking a comprehensive, bipartisan approach to address the ICS rates and charges within our jurisdiction. I'm also proud of efforts to address matters that lie beyond our jurisdiction. These efforts began with the work of Commission staff, whose analysis of intrastate rate data revealed that the vast majority of ICS calls—roughly 80%—are reported to be intrastate. They also found that ICS providers are charging egregiously high intrastate rates across the country—as much as 26 times the interstate rate. Again, the D.C. Circuit has ruled that the FCC has no authority to cap these rates. I therefore would welcome congressional action to grant the Commission such authority.

So long as this gap in the law remains unfulfilled, I urge our state partners—Governors, state legislatures, state corrections officials, and state commissions—to address intrastate ICS rates. That's why I recently sent a letter to the President of the National Association of Regulatory Utility Commissioners as well as 45 state commissions calling on states to exercise their authority and, at long last, address this pressing problem. I'm pleased that NARUC agrees and I look forward to working with them on this important issue. Only with joint effort can we ensure that incarcerated individuals and their loved ones can maintain vital connections.

For their outstanding, exacting, and tireless work on this item, I'd like to thank the following Commission staff: Susan Bahr, Allison Baker, Peter Bean, Kelly Dickson, Justin Faulb, Amy Goodman, William Kehoe, Minsoo Kim, Madison Laton, Kris Monteith, Terri Natoli, Payal Patel, Erik Raven-Hansen, Marvin Sacks, Gunjan Shah, and Gil Strobel of the Wireline Competition Bureau; Peter Alexander, Octavian Carare, Paula Cech, Stacy Jordan, Steven Kauffman, Richard Kwiatkowski, Susan Lee, Giulia McHenry, Amy Nathan, Jeff Prince, Eric Ralph, Daniel Shiman, Emily Talaga, Shane Taylor, and Geoff Waldau of the Office of Economics and Analytics; Ashley Boizelle, Mike Carlson, Sarah Citrin, Valerie Hill, Jake Lewis, Rick Mallen, Linda Oliver, Joel Rabinovitz, and Bill Richardson of the Office of General Counsel; Eliot Greenwald and Michael Scott of the Consumer and Governmental Affairs Bureau; and Rizwan Chowdhry, Jeffrey Gee, and Kalun Lee of the Enforcement Bureau.

STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375.

There is no question that the market for inmate calling services is broken. The providers offering these services face no competition, so market forces do not operate to constrain the charges that they pass along to consumers. That's why the FCC has an important role to play in ensuring just and reasonable rates. In the past, the FCC made several attempts to reform the system, but it did so in ways that exceeded our authority. That's why the D.C. Circuit repeatedly turned back those efforts, leaving the status quo largely in place.

Today, we move forward in a way that will deliver meaningful reform while respecting the limits Congress has imposed on our authority. The reforms we adopt today will result in lower fees for a broad array of services, and our proposals for further reforms will lower rates for interstate and international calls based on a methodology that corrects for the flaws underlying the FCC's prior attempts at reform.

This item will make a meaningful difference in Americans' lives, so I want to thank the Wireline Competition Bureau for their work on this item. It has my support.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL

Re: *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375.

It is never too late for justice. It is never too late to do the right thing. But some things can try your patience. The painfully slow pace of the efforts of the Federal Communications Commission to right the wrong of prison phone rates is one of them.

It's been seventeen years since Martha Wright filed a petition calling on this agency to do something about the unconscionable rates families of the incarcerated pay just to keep in touch. Martha Wright was not motivated to do this by corporate interests that show up regularly in our halls. She was not seeking attention. She was a grandmother who simply wanted to keep in touch with her grandson.

She knew then what we all know now. For those who are incarcerated and their loved ones, talk does not come cheap. Prisoners are often separated from their families by hundreds of miles, and families may lack the time and means to make regular visits. So calls from payphones are the only way to stay connected. But the price of individual calls can be as much as many of us pay for unlimited monthly plans. This makes it hard for the families of prisoners to stay in touch. This is not just a strain on the household budget. It is a cruel strain on the millions of families and children of the incarcerated—and it harms all of us because regular contact with kin can reduce recidivism.

This agency should be embarrassed. The fact that it has taken us so long to fix this problem is especially shameful now as we wrestle with a health crisis that has made our prisons less safe and in-persons visits no longer viable.

But here we are. So today's order is welcome, even if it is overdue. More than three years after a court sent our work on this issue back to the agency, today we pick and move ahead. To remedy the excesses in interstate rates, we propose new rate caps. We also properly assert our authority over ancillary fess, which can easily be abused and used as a backdoor effort to raise rates. We are also upfront about our jurisdictional challenges. Addressing intrastate rates is complicated, but an essential part of reform. Doing so will require greater coordination with state authorities and perhaps even legislation.

This is the kind of candor we need. Because the United States is home to the largest incarcerated population in the world, with 2.3 million people in our prisons, jails and immigration detention facilities. No other country comes close. Collectively we spend over a quarter of a trillion dollars a year to keep our criminal justice system in place. But that understates the real cost—swelling despair, destroyed potential, and diminished possibilities for rehabilitation.

So let's acknowledge this rulemaking is progress. It's a step forward in making communications more just for all. But we never would have reached this point without a handful of women who have led the way. It started with a grandmother—Martha Wright. We also owe a debt of gratitude to former Commissioner Mignon Clyburn for her work to press this issue. Plus we should praise Senator Tammy Duckworth who has, year after year, sought to fix prison payphone rates, including those intrastate calls, which represent the bulk of calls made today and are in dire need of reform. I'm proud to have written an editorial with her about it late last year. But there's someone else who deserves credit, and that's former FCC Chairman Julius Genachowski. After all, it was under his watch that the agency first showed the moral courage necessary to pick up this petition and make the case for reform.

It has taken too long to get here. We are now due for some speed. So I look forward to the record that develops and hope we move ahead at a rapid pace. Justice here has been delayed but it should no longer be denied.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375.

The American criminal justice system currently detains almost 2.3 million people across state and federal prisons, juvenile correctional facilities, local jails, prisons in U.S territories, and other facilities of confinement.

2.3 million people.

I do not believe it to be my role as an FCC Commissioner to push specifically for criminal justice reform, but I do know that it is always the right time to fight for justice. The item before us today is but one long overdue step in the approach to treating people behind bars with the dignity they deserve. People who are incarcerated are parents, siblings, daughters, sons, partners, and friends. And incarcerated people should have access to affordable communications with their loved ones and attorneys because that is a critical element of restorative justice which impacts both the incarcerated and our larger society.

In December of last year, I visited the D.C. Jail and sat down with nearly 25 men who are currently incarcerated there. While they were of all ages—most were very young, between the ages of 18 to 25, but a few of their mentors were no doubt older than me—they were all men of color. They belonged to Young Men Emerging, a special program that offers group counseling, mentoring, job training, and educational programs overseen by Director Quincy Booth, Dr. Keena Blackmon, and other members of Director Booth's team. During my visit, it took no time at all to hear about their aspirations, goals, and in some cases, future business plans. But to a person, I heard from them how important it was that they stay connected with their loved ones on the outside.

Which brings us to today.

In this Report and Order, the Commission responds to the D.C. Circuit's remands and concludes that ancillary service fees cannot be separated into interstate and intrastate components unless the fee is clearly ancillary to an intrastate-only call. With this Order, providers are prohibited from creating any additional ancillary service charges outside of what is permitted and from imposing charges in excess of our ancillary service fee caps, or else they will be subject to enforcement action. This decision means our most vulnerable Americans will not feel the brunt of manufactured, exorbitant fees.

Additionally, today's Further Notice of Proposed Rulemaking recommends that we lower interstate rate caps to $0.14 per minute for debit, prepaid, and collect calls made from prisons and $0.16 per minute for debit, prepaid, and collect calls made from jails under the just and reasonable standard of section 201(b). I am supportive of lowering the interstate rate caps, instituting an international rate cap, and the efforts of the Commission to seek comment on our methodology in order to determine if the rates within our jurisdiction should be even lower than what is proposed.

Even with the Commission's recommendations here today, we must deal with the harsh reality that these efforts only go so far to address the significant costs families spend to stay in touch with their loved ones who are incarcerated. The costs are shocking. According to the Prison Policy Initiative, the average 15 minute in-state call from jails is $5.74; however, the same call can cost up to $24.82 depending on the factors we all know are at play, including site commissions. This means that it will cost virtually all families thousands of dollars a year just to talk to an incarcerated loved one for 30 minutes a few times a week.

I recently spoke with the most tireless champion on this issue that I know—former FCC Commissioner Mignon Clyburn, who led the Commission's efforts to bring communications justice to the incarcerated. She agreed with me that we're on a "quest to ensure there are just and reasonable rates and charges for interstate inmate calling services." And always with an eye on what's next, she expressed her "sincere hope that local jurisdictions, state public service commissions, and lawmakers with the authority to act on behalf of those who make nearly 80% of the calls, which are in-state calls, from correctional

facilities, will not only acknowledge the symbolism of today's vote but be inspired to institute their own critically needed reforms post haste." And to that I say, I couldn't agree more.

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And so my vote today is for the men I met in all journeys of their lives in the D.C. Jail nearly nine months ago, but equally so for their families and loved ones because as Bryan Stevenson, founder and Executive Director of the Equal Justice Initiative, says: "The true measure of our character is how we treat the poor, the disfavored, the accused, the incarcerated, and the condemned."

Thank you to the Wireline Competition Bureau for your work on this important item and for incorporating input from advocates who continue to work tirelessly to seek communications justice for the incarcerated.