FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket Nos. 12–375, 23–62; DA 23–355; FR ID [139745]]

Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: The Federal Communications Commission (Commission) seeks comment on the contours and specific requirements of the proposed 2023 Mandatory Data Collection for incarcerated people's communications services. The Commission has drafted proposed instructions, templates, and a certification form for the proposed 2023 Mandatory Data Collection. The Commission seeks comment on all aspects of these documents.

DATES: Comments are due June 2, 2023. Reply comments are due June 20, 2023.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 12–375 and 23–62, by either of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the Electronic Comment Filing System (ECFS): *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Currently, the Commission does not accept any hand or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission adopted a new Protective Order in this proceeding which incorporates all materials previously designated by the parties as confidential. Filings that contain confidential information should be appropriately redacted and filed pursuant to the procedure described in that Order.

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

FOR FURTHER INFORMATION CONTACT: Ahuva Battams, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418–1565 or via email at *ahuva.battams@fcc.gov.* Please copy *mandatorydatacollection@fcc.gov* on any email correspondence.

SUPPLEMENTARY INFORMATION: This is a summary of a document that the Federal Communications Commission's Wireline Competition Bureau released on April 28, 2023. A full-text version of the document is available at the following internet address: *https://www.fcc.gov/document/proposed-2023-ipcs-mandatory-data-collection-public-notice.*

Synopsis

Introduction and Background

1. By this document, the Wireline Competition Bureau (WCB) and Office of Economics and Analytics (OEA) (collectively, WCB/OEA) seek comment on the contours and specific requirements of the proposed 2023 Mandatory Data Collection for incarcerated people's communications services (IPCS). In issuing this document, they act pursuant to the Federal Communications Commission's (Commission) directive so that it is able to implement the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act). *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services,* Order, 88 FR 19001, March 30, 2023 (*2023 IPCS Order*), and Notice of Proposed Rulemaking, 88 FR 20804, April 7, 2023 (*2023 IPCS Notice*); Martha Wright-Reed Act, Public Law 117–338, 136 Stat. 6156.

2. The Martha Wright-Reed Act directs the Commission to ''promulgate any regulations necessary to implement'' the Act, including its mandate that the Commission establish a ''compensation plan'' ensuring that all rates and charges for IPCS ''are just and reasonable,'' not earlier than 18 months and not later than 24 months after the Act's January 5, 2023 enactment. The Act requires the Commission to consider, as part of its implementation, the costs of ''necessary'' safety and security measures, as well as ''differences in costs'' based on facility size, or ''other characteristics.'' It also allows the Commission to ''use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider'' in determining just and reasonable rates.

3. In recent years, the Commission has collected data from providers of calling services for incarcerated people as part of its ongoing efforts to establish just and reasonable rates for those services that reduce the financial burdens imposed on incarcerated people and their loved ones, while ensuring that providers are fairly compensated for their services. In requiring or allowing the Commission to consider certain types of costs, the new Act contemplates that the Commission would undertake an additional data collection. To ensure that it has the data it needs to meet its substantive and procedural responsibilities under the Act, in the *2023 IPCS Order* the Commission delegated authority to WCB/OEA to ''update and restructure'' the Commission's most recent data collection (the Third Mandatory Data Collection) ''as appropriate in light of the requirements of the new statute.'' This delegation requires that WCB/OEA collect ''data on all incarcerated people's communications services from all providers of those services now subject to'' the Commission's ratemaking authority, including, but not limited to, requesting ''more recent data for additional years not covered by the [Third Mandatory Data Collection].'' The Commission directed WCB/OEA to modify the template and instructions of the most recent data collection to the extent appropriate to timely collect such information to cover the additional services and providers now subject to the Commission's authority.

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

Overall Approach

5. Pursuant to their delegated authority, WCB/OEA propose updated

instructions, a template, and a certification form for the proposed 2023 Mandatory Data Collection, as posted on the Commission's website. The template consists of a Word document (Word template) and Excel spreadsheets (Excel template). WCB/OEA seek comment on all aspects of these proposed documents. Do the proposed documents seek all the information the Commission will need to establish a compensation plan ensuring that IPCS rates and charges are just and reasonable and that IPCS providers are fairly compensated, consistent with the Martha Wright-Reed Act? If not, what steps should WCB/OEA take to improve the proposed documents? The Commission's prior data collections have demonstrated that detailed and specific instructions and templates are essential to ensure that providers use comparable procedures to determine and report their costs, revenues, demand units, and other data. WCB/OEA invite comment on whether the proposed instructions and template are sufficiently detailed to accomplish this objective. If not, what additional instructions, inquiries, or fields should be added? Conversely, are there any instructions, inquiries, or fields that could be removed because they are unnecessary?

6. WCB/OEA propose to retain the overall structure of the Third Mandatory Data Collection, while revising and supplementing the definitions, instructions, and template to accommodate the Commission's expanded authority. To a large extent, the specific information they propose to collect, and the related instructions (including those relating to cost allocation), parallel the information collected by, and the instructions for, the Third Mandatory Data Collection. WCB/OEA invite comment on this approach. They ask that any commenter supporting an alternative approach, either with regard to the data collection as a whole or a particular aspect, explain in detail how that alternative approach would enable the Commission to discharge its responsibilities under the Martha Wright-Reed Act and the Communications Act of 1934, as amended (the Communications Act).

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

8. *Cost Categories.* The Martha Wright-Reed Act expands the Commission's authority under section 276(b)(1)(A) of the Communications Act to include ''advanced communications services,'' as defined in section 3(1)(A), (B), (D), and new (E) of the Communications Act. Those provisions of section 3(1), in turn, define ''advanced communications services'' as including (1) ''interconnected VoIP [Voice over internet Protocol] service,'' (2) ''non-interconnected VoIP service,'' (3) ''interoperable video conferencing service,'' and (4) ''any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.'' The Act also extends the Commission's ratemaking authority to intrastate as well as interstate and international IPCS.

9. WCB/OEA propose to require providers to allocate their investments and expenses among audio IPCS, video IPCS, safety and security measures, various types of ancillary services, and other services and products, on both a company-wide and a facility-specific basis for 2022 (the types of ancillary services are automated payment services, live agent service, paper bill/statement service, single-call and related services, third-party financial transaction services, and other ancillary services). WCB/OEA invite comment on this proposal. Should any additional categories be specified for providers to use? Alternatively, would a more limited group of cost categories still allow the Commission to discharge its ratemaking responsibilities?

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

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

12. *Intrastate and International IPCS.* In the Third Mandatory Data Collection, WCB/OEA required providers to report the costs of providing inmate calling services on a total company basis, without separating them into interstate/international and intrastate components. Although companies had the option to allocate their total company costs between interstate/international and intrastate inmate calling services, no provider exercised this option. Accordingly, WCB/OEA propose to follow their previous approach and require companies to report costs for IPCS without separation between these jurisdictions and provide an option for separate reporting for companies that elect to do so. WCB/OEA seek comment on this proposal. Do the costs of either audio IPCS or video IPCS vary significantly depending on whether they are interstate, intrastate, or international? If so, how should WCB/OEA revise the proposed instructions and templates to capture those differences? In the Third Mandatory Data Collection, WCB/OEA required inmate calling services providers to report their payments to carriers for terminating international communications as an operating

expense without jurisdictional separation on both a total-company and a facility-by-facility basis. The proposed instructions and Excel template would continue this approach.

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

14. *Costs of Providers' Safety and Security Measures.* The Martha Wright-Reed Act specifies that the Commission ''shall consider,'' as part of its ratemaking, ''costs associated with any safety and security measures necessary to provide'' telephone service and advanced communications services in correctional institutions. To facilitate the Commission's consideration of such costs, WCB/OEA propose to require providers to report the costs they incurred to provide safety and security measures during 2022, both in the aggregate and in specific categories. Determining those costs would involve several steps.

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

16. Second, the proposed instructions would require each provider to allocate their annual total expenses incurred in providing safety and security measures among seven company-level categories using the provider's best estimate of the percentage of those expenses attributable to each category. As set out in the proposed instructions, annual total expenses are the sum of annual operating expenses and annual capital expenses. The seven company-level categories are: (1) expenses related to Communications Assistance for Law Enforcement Act, (2) law enforcement support services, (3) communication security services, (4) communication recording services, (5) communication monitoring services, (6) voice biometrics services, and (7) other safety and security measures. WCB/OEA seek comment on the benefits and burdens of this approach. They invite comment on the categories of safety and security measures in the proposed instructions. How, if at all, should these categories be changed? Are there other examples of specific safety and security measures that should be included in the illustrative lists included in each of the categories? If so, what are these measures and how should they be categorized? Are there other categories of safety and security measures that should be included? If so, which ones? Alternatively, are there categories that should be removed? If so, which ones should be removed and why? Do commenters agree with the proposed approach of requiring providers to allocate annual total expenses on an estimated percentage basis or should WCB/OEA instead require providers to perform a detailed allocation of actual investments and expenses among the seven categories? To the extent commenters argue that a more detailed cost allocation would be more appropriate, commenters should explain and justify in detail the cost allocation method they propose and the benefits and burdens of their approach.

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

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

19. *Costs of Facilities' Safety and Security Measures.* In the *2023 IPCS Notice,* the Commission sought comment on how it could determine the costs associated with necessary safety and security measures ''to the extent resources of the facilities are used to provide these measures.'' Consistent with that request, WCB/OEA propose to require providers to report any verifiable, reliable, and accurate information in their possession about the costs the facilities they serve incur

to provide safety and security measures in connection with the provision of IPCS. To the extent providers have such information for any specific facility, the instructions would direct providers to report the annual total expenses facilities incur using the same seven categories proposed in connection with reporting provider-incurred safety and security costs. WCB/OEA seek comment on the benefits and burdens of this approach. Is there a better approach the Commission could use to obtain the costs facilities incur in providing safety and security measures? The proposed instructions require providers to be able to reproduce, on request, documentation sufficient to explain and justify the accuracy and reliability of any data they report regarding the expenses incurred by facilities for safety and security measures. Do commenters agree with this approach? Will it enable the Commission to evaluate the reliability and accuracy of any data receives? If not, how should providers be required to demonstrate the accuracy and reliability of the data they provide regarding the costs facilities incur to provide safety and security measures? To the extent providers are not able to establish the accuracy and reliability of the data they rely on, how should the Commission accurately account for these expenses?

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

Specific Instructions

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

22. The proposed instructions also address many data requests that are not specifically described below. WCB/OEA seek comment on all aspects of the proposed instructions, including on requests that they do not specifically seek comment on in this document.

23. *Definitions.* The proposed instructions contain new and revised definitions reflecting the Commission's expanded authority over IPCS. WCB/OEA seek comment on these definitions. Are they sufficiently clear? If not, how should they be modified? Are there any undefined terms that should be defined? Are there any terms that should be added to the proposed instructions that would assist filers in furnishing the Commission with the relevant data? If so, what are they and how should they be defined? Should any proposed definitions be removed?

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

25. *Response Granularity.* WCB/OEA propose that all providers submit data both at the company-wide level and for each correctional facility in which the provider offered IPCS during 2022. They seek comment on this approach. WCB/OEA propose this method to fully account in a coherent way for the shared costs providers incur as some of the assets or labor they use to provide IPCS are also used to provide other services, and are used to provide IPCS to multiple facilities. If parties believe that a different level of granularity is appropriate, please explain. Assuming WCB/OEA should require providers to report data on a facility-level basis, how should providers that do not track costs on a facility level be required to respond? Are the cost allocation procedures set forth in the proposed instructions sufficient to enable these providers to allocate costs down to the facility and, if not, what additional procedures should be required? Are there any additional data WCB/OEA should seek that would help ensure that providers allocate costs to facilities in a manner that more accurately reflects how such costs are incurred?

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

27. *Financial Information.* The proposed instructions retain the requirements that providers report financial data in accordance with generally accepted accounting principles (GAAP) and asset values that reflect the results of recent impairment testing. Under GAAP, an asset or asset group is impaired when its carrying amount, that is, the value reflected on the balance sheet, net of depreciation or amortization, exceeds its fair market value. In that case, the value of the impaired asset or asset group is written down and the reduced value is reflected on the balance sheet and a loss is recorded on the income statement. Is this the correct approach? If not, why not? Are other or additional instructions needed to ensure that the carrying value of any provider's assets is not misstated? If so, what other instructions should be adopted?

28. *Site Commissions.* The proposed instructions retain in large part the questions concerning company-wide and facility-level site commission data from the Third Mandatory Data Collection. Are there specific changes WCB/OEA should consider, either to the overall structure or level of disaggregation for site commission data? If so, what changes do commenters suggest and why? As explained in the proposed instructions, WCB/OEA propose new narrative questions in a separate Word template designed to obtain information about interstate, intrastate, and international site commissions, including whether and how the formulas providers use to calculate monetary site commissions differ among interstate, intrastate, and international communications. WCB/OEA also propose a new Word template question seeking information about

whether providers pay site commissions separately on audio and video services and how those site commissions are calculated. WCB/OEA invite comment on these proposed questions and ask commenters to suggest alternative questions that would help the Commission obtain reliable and accurate data and information on site commission payments for interstate, intrastate, and international, as well as for audio and video, communications.

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

Reporting Template

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

Timeframe for Provider Responses to the Data Collection

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

Digital Equity and Inclusion

32. As part of the Commission's continuing effort to advance communications equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, WCB/OEA invite comment on any equity-related considerations and benefits that may be associated with the upcoming data collection. Specifically, WCB/OEA seek comment on how their proposals for that collection may promote or inhibit advances in diversity, equity, inclusion, and accessibility. WCB/OEA define the term ''equity'' consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. Exec. Order No. 13985, 86 FR 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

Procedural Matters

33. *Ex Parte Presentations.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation

consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

34. *Supplemental Initial Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act, the Commission has prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this document. The Commission requests written public comments on the Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments provided in this document. The Commission will send a copy of this document, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, summaries of this document and the Supplemental IRFA will be published in the **Federal Register**.

35. *Initial Paperwork Reduction Act Analysis.* This document, and the instructions and templates, contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. Contemporaneously with the publication of this Notice in the **Federal Register**, WCB/OEA will publish a notice in the **Federal Register** seeking comment pursuant to the PRA on the information collection requirements for the proposed 2023 Mandatory Data Collection in the *2023 IPCS Notice* and this document. WCB/OEA will consider comments submitted in response to both **Federal Register** notices in finalizing this information collection for submission to OMB. In addition, WCB/OGC note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198; *see* 44 U.S.C. 3506(4), they seek comment on how the Commission may further reduce the information collection burden for small business concerns with fewer than 25 employees.

Supplemental Initial Regulatory Flexibility Analysis

36. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), WCB/OEA have prepared this Supplemental IRFA of the possible significant economic impact on small entities by the policies and rules proposed in this document to supplement the Commission's Regulatory Flexibility Analyses completed in the *2023 IPCS Notice* and *2023 IPCS Order.* WCB/OEA request written public comment on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments provided in this document. The Commission will send a copy of this document, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the SBA. This present Supplemental IRFA conforms to the RFA.

Need for, and Objectives of, the Proposed Rules

37. In this document, WCB/OEA seek comment on the contours and specific requirements of the proposed 2023 Mandatory Data Collection for IPCS. In issuing this document, WCB/OEA act pursuant to the Commission's directive so that it will be able to implement the Martha Wright-Reed Act. The Commission determined that this data collection would enable it to ''meet both [its] procedural obligations (to consider certain types of data) and [its] substantive responsibilities (to set just and reasonable rates and charges)'' under the Martha Wright-Reed Act and the Communications Act. Likewise, it directed WCB/OEA ''to update and restructure the most recent data collection as appropriate to implement the Martha Wright-Reed Act.''

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

Legal Basis

39. The proposed action is pursuant sections 1, 2, 4(i)–(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403 and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Act, Public Law 117–338, 136 Stat. 6156 (2022).

Description and Estimate of the Number of Small Entities to Which the Proposed 2023 Rules Would Apply

40. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed 2023 Mandatory Data Collection. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. 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.

41. As noted above, an IRFA was incorporated in the *2023 IPCS Notice.* In that analysis, the Commission described in detail the small entities that might be affected. Accordingly, in this document, for the Supplemental IRFA, WCB/OEA hereby incorporate by reference the descriptions and estimates of the number of small entities from the *2023 IPCS Notice's* IRFA.

Description of Project Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

42. This document seeks comment on the specifics of the proposed 2023 Mandatory Data Collection to ensure that the Commission receives the data it needs to meet its substantive and procedural responsibilities under the Act. The proposed 2023 Mandatory Data Collection would require IPCS providers to submit, among other things, data and other information on calls, demand, operations, company and contract information, information about facilities served, revenues, site commission payments, the costs of safety and security measures, video IPCS, and ancillary fees. The proposed 2023 Mandatory Data Collection may require entities, including small entities and IPCS providers of all sizes, currently subject to the Commission's inmate calling services rules to be subject to modified or new reporting or other compliance obligations. This may also be the case for providers newly subject to the Commission's expanded regulatory authority, such as providers

offering only intrastate or certain advanced communications. In addition, WCB/OEA recognize that their actions in this proceeding may affect the reporting, recordkeeping, and other compliance requirements for several groups of small entities. In assessing the cost of compliance for small entities and for providers of incarcerated people's communications services of all sizes, at this time WCB/OEA are not in a position to determine whether the proposed 2023 Mandatory Data Collection will impose any significant costs for compliance in general. WCB/OEA anticipate the information they receive in comments, including any cost and benefit analyses, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries they make in this document.

Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

43. 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.'' WCB/OEA will consider all of these factors when they receive substantive comment from the public and potentially affected entities.

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

45. WCB/OEA will consider the economic impact on small entities, as identified in comments filed in response to this document and this Supplemental IRFA, in reaching their final conclusions and finalizing the instructions, the template, and certification form for the proposed 2023 Mandatory Data Collection.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

46. None.

(Authority: 47 U.S.C. 151–63)

Federal Communications Commission.

Lynne Engledow,

Deputy Chief, Pricing Policy Division, Wireline Competition Bureau.

[FR Doc. 2023–09502 Filed 5–2–23; 8:45 am]

BILLING CODE 6712–01–P