Incarcerated People's Communications Services (IPCS) Provider Annual Reporting, Certification, and Other Requirements, WC Docket Nos. 23-62, 12-375

3060-1222
April 30, 2025

SECURUS TECHNOLOGIES, LLC RESPONSE TO SUPPORTING STATEMENT

Securus Technologies, LLC ("Securus") submits these comments in response to the Federal Communications Commission's ("Commission") Supporting Statement.[1] The Commission, under the Biden Administration, developed an extraordinarily prescriptive regulatory framework detailed in the 500-page 2024 IPCS Order along with page-after-page of new codified rules.[2] This framework fundamentally reorganizes the entire incarcerated people's communications services ("IPCS") industry. Although Securus shares in the goal of setting fair and balanced rates for these services, and ensuring consumers obtain useful disclosures and information related to their purchased products and services, the Commission's 2024 IPCS Order is extreme in the unacknowledged costs and burdens that it has imposed on the industry. In the face of this Administration's deregulatory efforts, OMB should reject the information collections discussed in these comments as violating the Paperwork Reduction Act ("PRA") requirements.

In its PRA comments before the Commission,[3] Securus explained that a number of the new information collections were unnecessary to achieve the agency's goal of protecting consumers, were overly burdensome and, in many cases, redundant, and they lacked practical utility[4] in that some were simply impossible to implement.[5] The Commission also woefully underestimates the time and cost needed to implement this host of new information collections. The Commission's Supporting Statement fails to meaningfully address Securus's PRA Comments, as explained below.

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[1] *Incarcerated People's Communications Services (IPCS) Provider Annual Reporting, Certification, and Other Requirements*, WC Docket Nos. 23-62, 12-375, OMB No. 3060-1222, April 2025 (Supporting Statement).

[2] *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking, FCC 24-75 (rel. July 22, 2024) (*2024 IPCS Order*).

[3] Securus Technologies, LLC Comments, WC Docket Nos. 23-62 and 12-375, at 2 (rec. Jan. 7, 2025) (Securus PRA Comments)

[4] The PRA implementing rules define practical utility as "the actual, not merely theoretical or potential, usefulness of information" including a person's "ability to receive and process that which is disclosed." 5 C.F.R § 1320.3(l).

[5] In reviewing information collections, OMB assesses, among other points: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

I. The Commission Failed to Reasonably Estimate Costs

A. The Commission Erroneously Estimates Zero Annual Cost

As noted by both Securus and another IPCS provider, ViaPath[6], the Commission assigned no costs associated with implementing the host of new and modified information collections established in the 2024 IPCS Order. In rejecting comments by Viapath that there are obvious costs associated with complying with these new obligations, the Commission's Supporting Statement claims that only new, non-recurring capital costs are to be considered.[7] This is wrong. Agencies are required to assess not only one-time capital investment costs, but also the annual operating costs.[8] The entire goal of assessing information collection costs would be defeated if only non-recurring capital investments were counted. The Commission's failure to even attempt to estimate recurring or annualized costs alone warrants rejection of the information collections at issue.

B. The Commission Grossly Underestimates Burdens

In addition to erroneously determining zero annual cost, the Supporting Statement's burden estimates for each set of information collections is vastly understated. OMB regulations define burden as "the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information" to third parties. Burden includes, among other activities: developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information; developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information and for the purpose of disclosing and providing information; training personnel to be able to respond to a collection of information; and transmitting, or otherwise disclosing the information. [9]

The PRA requires agencies to objectively estimate the burden of each information collection by identifying the number of companies effected, *i.e.,* the respondents, the number of responses required of each respondent and estimated time for each response. A common error throughout the Commission's burden estimates is the Commission's assumption that only one annual response is required for obligations that require virtually daily disclosures to IPCS providers' hundreds or thousands of

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[6] Global Tel*Link Corporation d/b/a ViaPath Technologies Paperwork Reduction Act Comments, WC Docket Nos. 23-62 and 12-375, at 4 (rec. Jan. 7, 2025) (ViaPath Comments); Securus Comments at iii, 4.

[7] Supporting Statement at 16 ("the 'total annual cost' estimate … reflects our estimate of any additional capital costs that IPCS providers will incur"). As explained in the next footnote, annual costs include both capital and startup costs as well as nonrecurring operating costs. Moreover, capital costs include the costs of software purchases. *See* ROCIS PRA Module User Guide at 103, available at https://www.rocis.gov/rocis/viewResources.do.

[8] *See* https://pra.digital.gov/burden/estimation/ (defining two categories of costs: (1) non-recurring or capital costs and (2) "Recurring or annualized cost: ongoing costs such as operating or maintaining a capital investment.") *See also,* U.S. Office of Personnel Management, Paperwork Reduction Act (PRS) Guide, V. 2.0 at 33 (April 2011), directing agencies to include both capital and operating cost:

> Enter the recurring annual dollar amount of costs for all respondents associated with operating or maintaining systems or purchasing services. Include any money the respondent spends to comply with the information request or requirement (e.g., for attorney fees). Operations and maintenance costs include the costs of mailing, faxing, or calling in information, making paper copies, notary costs, and electronic transmissions. Regular maintenance of any equipment whose initial costs fall under "capital and start-up" would also belong here.

[9] 5 C.F.R. § 1320.3(b)(1). Activities undertaken in the normal course do not count as a burden but the Commission must "demonstrate[] that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary." *Id.* at (b)(2).

consumers.[10] To illustrate, Securus highlights the frequency of third-party disclosures and notices required by the Commission's information collections.

1. Inactive Accounts Reporting Requirements (64.6130)

The Commission assumes a single, annual response to the numerous disclosure and notice requirements associated with providing refunds. It estimates that each of 35 respondents will spend 100 hours per response, for a total industry-wide hourly burden of 3500 hours at a yearly in-house costs for all 35 respondents at $229,180.[11] The Commission does not define what it means by a "response." As detailed below, the regulation and related disclosures and notices required by the 2024 IPCS Order require nearly continuous collection and analysis of data accompanied by mandated updates to consumers.

The refund obligation is triggered after 180 days of non-activity in an account. While providers track records of activity, such as a new deposit into an account or use of funds to make a call, the refund obligation requires all IPCS providers to continuously track every consumer account for non-activity. Securus, for one, would not track account inactivity, particularly for debit accounts (described below), absent the refund obligation. At any rate, the Commission's refund rules require multiple disclosures throughout the year to account holders. These include:

- Contact the account holder prior to closing an account (64.6130(d)(1))
- Notify the account holder that an account has been deemed inactive (64.6130(d)(2)(i))
- Timely responses to inquiries from account holders (64.6130(d)(2)(iii))
- Contact the account holder prior to closing an account to see if the account holder wants to continue the account or obtain a refund (64.6130(f))
- Provide, in each billing statement or statement of accounts, notice of the status of accounts at least 60 days prior to the account being deemed inactive (64.6130)(k)(1) & (2))
- Include in such notices a description of how the account holder can keep the account open and can update the refund information. (64.6130)(k)(3)).

Each time one of these mandated disclosures is required to be made should be considered a response. The Commission's estimate that each IPCS provider will only spend 100 hours making all of these disclosures is patently defective.[12]

The in-house cost estimate for these responses is also inadequate. It assumes the labor costs is based on the hourly wage of a mid-level technician ($66.48 per hour) and ignores the work required by everyone from systems engineers, coders, regulatory attorneys and upper management to review and sign off on the development and implementation of the disclosures.

2. Alternative Pricing Plan Disclosures

All IPCS providers must offer calling and video services at rates that do not exceed the caps adopted in the 2024 IPCS Order. The Commission, however also allows providers to offer as a voluntary option alternative pricing plans, such as offering a set number of calls per month at a flat rate. Securus applauds this development and agrees with the Commission that providers should not use alternative

[10] Supporting Statement at 21-23.
[11] Supporting Statement at 21-22.
[12] Supporting Statement at 22 (estimating 35 providers will require 100 hours of time each to comply with the requirements of "section 64.6130(d), (e), (f), (h)-(k)").

pricing plans to avoid rate caps. Unfortunately, the Commission also established an overly burdensome disclosure framework that goes far beyond what is reasonably required to protect consumers, as explained below. Here, however, Securus focuses on the inadequacy of the Commission's burden estimate.

The Commission assumes that five IPCS providers may offer an alternative pricing plan and estimates for each provider that it will only take 200 hours annually to comply "with the requirements of sections 64.6140(c), (d), (e)(2)-(4), (f)(2), and (f)(4)."[13] The Commission considers compliance with all of these varying requirements to be a single response. The Commission's estimate is facially inadequate.

For one, the disclosures must be made repeatedly, including *at the beginning of each call*. It was Securus's experience with its previous alternative pricing plans, which provided discounted rates, that some incarcerated persons will make numerous calls a day.[14] Each disclosure needs to be tailored to the specific person making the call. These disclosures must be made for each participant in an alternative pricing plan and the disclosures must be made at all of the following times; (1) before a consumer enrolls; (2) upon the consumer's request at any time; (3) with each billing statement and "any related communication;" (4) at the beginning of each call (64.6140(c)(2)); and (5) on the provider's website, mobile application or on paper if requested (64.6140(c)(3)). The Commission requires all of the following disclosures be made at all of those times or places:

- Rates and taxes and fees;
- A detailed explanation of taxes and fees;
- Total plan charge;
- Quantity of minutes, calls or communications included in the plan;
- The service period;
- Beginning and end dates of the service period;
- Terms and conditions, including those related to dropped calls, including;
  - The types of dropped calls for which the consumer can receive a credit
  - How the credit will be calculated
  - How the consumer can request a credit[15]
- Terms and conditions of any automatic renewal provisions including providing notice three business days in advance of a renewal term (e.g., monthly renewal);[16]
- Cancellation provisions including that a consumer can cancel at any time, when default per minute billing will begin, how to cancel, that a consumer can pick a termination date, and the special circumstances for which a consumer who has cancelled can seek a refund.[17]
- The default per minute rate available at the facility if the consumer chooses not to use a plan;
- A statement that per minute rates apply for calls exceeding any plan limits;

[13] Supporting Statement at 22.
[14] The correctional authorities operating the jails and prisons typically impose time limits for each call, such as 15, 20 or 30 minutes depending on agency and facility.
[15] Dropped call disclosures are detailed at 64.6140(d).
[16] Renewal disclosures are further detailed at 64.6140(e)(2)-(4).
[17] Cancellation disclosures are further detailed at 64. 6140(f)(4).

- The breakeven point where the consumer begins saving money using the plan versus using default per minute rates;[18]
- The ability to obtain prior usage and billing data, upon request, for each of the most recent service periods.

In addition, once a consumer signs up for a plan, the provider must make a number of further disclosures specifically tailored to that plan and that consumer in monthly billing statements. (64.6140)(c)(6)). These disclosures include:

- Call details, including length of call, total minutes used for the service period (e.g. one month);
- Total charges including taxes and fees with explanations of each tax and fee;
- The charges that would have been assessed for each call if the consumer had not made those calls under the plan but using the provider's per minute rate at the facility (essentially creating a fake bill);
- Calculating a per minute rate under the plan even if the plan is based on number of calls rather than on a per minute basis;
- The Breakeven Point with an explanation of the Breakeven Point;
- Information about deposits made to the consumer's account and the account balance.

Finally, the alternative pricing plan provider must also include all of the consumer disclosures set forth in section 64.6110 to the extent not already encompassed in the above disclosures and all disclosures must be accessible to disabled consumers.

The Commission subsumes all of these frequently required disclosures into a single annual response that, as noted, the Commission estimates will take 100 hours of the provider's total time for the year. The Commission provides no further basis for this woefully inadequate cost estimate.

II. The Commission Information Collections Violate the PRA Apart From Erroneous Burden and Cost Estimates

A. Refund-Related Disclosures for Debit Accounts Have No Practical Utility

Incarcerated persons wishing to make calls to friends, family or others often set aside money in accounts to prepay for calls. There are generally two kinds of IPCS accounts. First, friends and family may set up a prepaid account in which they are the account holders. Second, the correctional authority or an IPCS provider may set up an account in which the incarcerated person is the account holder. These are called debit accounts. Although money can be deposited into both prepaid and debit accounts to be used to pay for making calls, they operate very differently. The Commission, however, treats them as identical for administration purposes, including for providing refunds of any unused balances after a period of time and all the related disclosures summarized above.

There are two key differences between prepaid and debit accounts, which the Commission ignores. The first concerns the ability to contact the account holder. It is relatively easy to contact friends and family who are the account holders of prepaid accounts. It is extremely difficult to contact

[18] For example, if a plan offers a specific number of calls for a set price, the breakeven point might indicate how many calls of a set duration the consumer must make using the plan before the consumer starts saving money as opposed to making those calls using the per minute rate offered at the specific prison or jail where the incarcerated person is held.

incarcerated persons who are account holders. Communications to incarcerated persons are tightly controlled by the correctional authorities operating the jail or prison. Thus, it is often impossible to contact incarcerated persons or to control the timing of such contacts. In most instances, an IPCS provider must rely on the correctional authority acting as an intermediary to make contact. (The calling services that IPCS providers offer are all outbound from the facility). The Commission nevertheless requires disclosures to incarcerated persons without regard to whether they can be received. The disclosures thus lack practical utility.

The second key difference relates to the nature of the accounts themselves. The animating concern driving the Commission's refund rules was that certain providers were taking unused balances from prepaid family and friends accounts into their own revenue base after some period of inactivity. To prevent this from happening, the Commission mandated that account balances remain the property of the account holder until used, and requires IPCS providers to make automatic refunds to account holders after a continuous 180-day period of inactivity. For friends and family prepaid accounts this rationale makes some sense. It makes no sense for debit accounts in which the incarcerated person is the account holder. It makes no sense because debit accounts never become "inactive" and unused balances never become available to include as IPCS provider revenue. They are opened when the incarcerated person enters the jail or prison, and stay open and active until the person is either released or transferred to another facility, at which point debit accounts are closed and refunds are administered in accordance with facility requirements. IPCS providers repeatedly pointed out to the Commission that its concern about providers taking unused balances into revenue did not apply to debit accounts. The Commission ignored these comments and assumed, without investigation, that prepaid and debit accounts are administered in the same way.

This difference between prepaid and debit accounts has a direct impact on the utility of the refund-related disclosure obligations. Even assuming the requisite disclosures and notices could be received by the incarcerated person, the person could not meaningfully act on the notice. For example, one disclosure requires IPCS providers to contact the incarcerated person after the requisite period of "inactivity" (180 days) to see if the person wants to continue the account or receive a refund. Sections 64.6130(d)(1) & 64.6130(f). But the incarcerated person has no ability to close the account at that point, nor does that person have the ability to receive a refund while still incarcerated.[19] Thus the disclosure has no utility as applied to debit accounts. The same notice obligation is contained at 64.6130(f) but is required once the account holder is released or transferred. At that point, there is no option to keep the account open and refunds are available at that point. The requirement to contact the account holder per subsection (f) is unnecessary.

All of these points and other infirmities with the disclosure rules as applied to debit accounts were presented to the Commission in Securus' PRA comments.[20] The Commission's response in the Supporting Statement does not meaningfully address them. First the Commission claims that Securus misunderstands the Commission's rules because they only apply to accounts under Securus's control and Securus described debit accounts under the correctional agency's control.[21] That misstates Securus's comments. Securus, explained that while some kinds of debit accounts are under the control of the correctional authority, and not subject to the Commission's refund-related information collections, there are other kinds of debit accounts that are under Securus' control and thus are very much subject to the

[19] Securus has no ability to send cash or any equivalent to a person while still incarcerated. And because the incarcerated person is the account holder, Securus cannot send money to anyone else. Even if Securus could "refund" unused balances in a debit account, the refund would go right back into the debit account.
[20] Securus PRA Comments at 5-14.
[21] Supporting Statement at 17-18.

Commission's refund rules and associated information collections.[22] The Commission's argument about debit accounts not under Securus's control is irrelevant. The information collections apply to Securus where it controls debit accounts.

The Commission next argues that Securus's arguments go to the underlying regulatory obligation to provide refunds, not to related information collections. Not so. Securus carefully detailed the deficiencies of the information collections as they applied to incarcerated persons that are the account holders of debit accounts. The supporting statement does not address Securus's points that it is extremely difficult to send disclosures and notices to persons in jails and prisons and, even if they could be received they cannot meaningfully be acted on by the incarcerated person.[23] The Commission's recitation of the goals of its refunds rules misses the point because the disclosures as applied to debit accounts do not further those goals.

B. The Disclosure Framework for Alternative Pricing Plans is Unworkable and Unnecessary

As with the information collections related to debit account refunds, the Commission fails to meaningfully grapple with Securus's concerns regarding the plethora of redundant disclosures for alternative pricing plans. The Commission claims instead that it has appropriately determined which disclosures are necessary and that decision is unassailable, regardless of the burdens they may impose.[24] But Securus has pointed out that the disclosures are not "necessary for the proper performance" of the Commission's functions, that they lack "practical utility," and it has "identified ways to enhance the quality, utility and clarity" of the information collections while minimizing burden. Securus has placed the information collections squarely in the cross hairs of the PRA. It is ipse dixit to argue that the information collections satisfy the PRA because the Commission thought it was good policy to adopt them.

For example, a major concern raised by Securus is the requirement to collect information contained in roughly three codified pages worth of disclosures and repeat all of them *at the beginning of each call*.[25] The Supporting Statement nowhere addresses this concern. For example, of what use is it for a consumer to hear, potentially multiple times a day, the same information regarding the cost of the plan, the number of minutes or calls in the plan, when the current plan period started and when it will end, how a consumer can get a refund, the per minute rate if the consumer does not use the plan, the break-even point (the point at which a consumer starts saving money), and how to obtain other information.[26] Simply reciting this information at the beginning of each call will take up valuable minutes because correctional agencies typically restrict the length of calls to between 15 to 30 minutes. No consumer would put up with this.[27]

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[22] Securus Comments at p. 5, n. 10 (describing two types of debit accounts, those controlled by Securus and those controlled by correctional authorities).

[23] A disclosure lacks practical utility if it cannot be received. 5 C.F.R. § 1320.3(l).

[24] Supporting Statement at 19 ("While Securus criticizes the required disclosures as overly burdensome and/or duplicative and provides an alternative proposal that would scale back the disclosures, the required disclosures are embedded in the Commission's rules and reflect the Commission's balancing of competing consumer and provider interests. This is not the appropriate forum to revisit that balancing.")

[25] Securus PRA Comments at 16-17.

[26] Supporting Statement at 5 (quoting Section 64.6140(c)(2)).

[27] Assuming that these disclosures can be reduced to a three-minute recorded message, a consumer purchasing a 100-call monthly plan – a type Securus offered in 2022 – would potentially listen to these disclosures repeated over and over again for up to five hours. It's completely unclear what protections or benefits are derived by the consumer having to listen to this volume of repeated information before they

Nor are these simple information collections. It is very likely that IPCS providers will offer different plans at different jails and prisons. Different information must be gathered for each facility and to some extent for each consumer participating in a plan. For example, providers must disclose the per minute rates available at the facility should the consumer chose not to participate in a plan. These rates differ from facility to facility. The specific per-minute rate available at the facility will affect the calculation of the alternative pricing plan's breakeven point that providers must disclose and the differing rates will require highly individualized disclosures of the "fake" bills informing consumers what they would have paid if they had chosen not to use the alternative pricing plan and used the default per minute rate for all calls the consumer made[28] Additionally, the information collection requires providers that offer a set number of calls per month nevertheless calculate a per minute plan rate.[29]

In short, the Supporting Statement fails to meaningfully grapple with the infirmities of its expansive disclosures or to explain why the Securus' proposal for a scaled-back but sufficient disclosure framework was unacceptable.

C. Disclosure of International Rate Information (64.6110(c))

The Supporting Statement completely misses the point of Securus's concern regarding the required consumer disclosure regarding the rates for making international calls. The price of international calls has two components: (1) the domestic component, which is capped at the Commission's rate caps; and (2) the international component, which reflects the costs that Securus incurs by paying foreign telephone companies to terminate the call in the foreign country. Securus and the Commission agree that the second component can be assessed to the consumer based on Securus's average costs, not the actual costs Securus incurs for each call.

The issue is what is required to be disclosed to the consumer in the bill regarding the price charged to the consumer. The price charged to the consumer includes the average cost for the international component. The Supporting Statement says that Securus can use the average cost in this disclosure.[30] The problem is that the actual disclosure requires something else. The disclosure requires Securus to include the *actual* amount Securus was charged by the third party carrier for a specific call, not the average: "Providers must identify the amount charged to the Consumer for the International Communication, including the cost *paid by the provider to its underlying international providers* to terminate the International Communication to the International Destination of the call." Section 64.6110(c) (emphasis added). The cost paid by Securus to the underlying provider for the call is not an average of all calls to the foreign country, but the actual specific charge from the third party carrier for that call. This actual charge is not what is billed to the consumer, who is billed the average. Requiring placing the actual cost Securus incurs from the underlying carrier for each call is not meaningful information to the consumer, will cause confusion, and imposes a burden on Securus to track and report on the consumer bills actual costs.

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can speak with their loved ones.

[28] Supporting Statement at 6 (quoting Section 64.6140(c)(6)(ii) (requiring calculation of "[t]he charges that would have been assessed for each call using the Provider's per-minute rate, and the total of those charges.")

[29] Supporting Statement at 6 (quoting 64.6140(c)(6)(iii) (requiring IPCS providers to provide each consumer "[t]he calculated per-minute rate for the service period under the Alternate Pricing Plan, calculated as the charge for the service period divided by the total minutes used by that Consumer, with an explanation of that rate.")

[30] Supporting Statement p. 19-20.

Securus welcomes the Commission's confirmation that it need only indicate the average charge on the bill. But the Commission needs to revise its disclosure rule to conform to that stated policy.

D. Information Collections Related to the Commission's Waiver Process

For purposes of the OMB's review, Securus focuses on one specific information collection required to obtain a waiver of the Commission's rate caps.[31] Specifically, the 2024 IPCS Order added a new information collection that requires providers to demonstrate that the waiver request, if granted, "will not result in unjust and unreasonable IPCS rates and charges." This additional information collection is not captured in the codified rules at section 64.6120. Instead it is clearly stated at paragraph 480 of the 2024 IPCS Order: "Consistent with the Commission's previous waiver process and with its waiver processes generally, petitioners will continue to bear the burden of proof to show that good cause exists to support waiver requests, but all waiver requests must now include a showing that the request will not result in unjust and unreasonable IPCS rates and charges."

The Commission, however, provides no guidance on how that additional showing can be met. Given that the rate caps are based on the Commission's assessment of what constitutes a just and reasonable rate, requiring an IPCS provider to justify a higher rate as not unjust and unreasonable warrants some guidance from the agency. Otherwise, this additional obligation appears to confer unlimited discretion on the part of the agency to deny a waiver regardless of an IPCS provider's cost showing.

[31] Generally, the waiver process allows IPCS providers to charge more than the applicable rate cap if it can show that it cannot recover its costs, assuming all of the revenues it can generate. *See* Supporting Statement p. 10-11.