

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	FCC FORM 2300
)	FCC FORM 2301(a)
Paperwork Reduction Act Review)	FCC FORM 2301(b)

COMMENTS

The Wright Petitioners, by and through their counsel, and pursuant to the Paperwork Reduction Act ("PRA") of 1995, submit these comments regarding the above-referenced information collections. On August 1, 2016, public notice of the information collections was released, establishing September 30, 2016, as the deadline for submitting comments.¹

The proposed information collections are based on the requirements adopted in the Second Report and Order in WC Docket 12-375, and codified in Part 64, Subpart FF of the Commission's rules.² In particular, the *Second Report and Order* established a requirement that providers of Inmate Calling Services ("ICS") submit a mandatory data collection with information regarding each facility served by the ICS provider.³ Moreover, the *Second Report and Order* adopted rules that require each ICS provider submit an Annual Report containing certain information regarding its service over the past year, and a certification from an officer or director of the ICS provider certifying the accuracy and completeness of

¹ See *Information Collections Being Reviewed by the Federal Communications Commission*, Public Notice, 81 Fed. Reg. 50,499 (Aug 1, 2016)(the "Public Notice").

² See *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12,763 (2015)(*"Second Report and Order"*). See also 47 C.F.R. §64.6000 *et seq.* (2016).

³ *Second Report and Order*, 30 FCC Rcd at 12,862.

the information contained in the Annual Report.⁴ The *Public Notice* referenced the creation of three new forms for ICS providers to use in connection with these requirements and sought comment from the public with respect to the information to be collected.

As set forth below, the Wright Petitioners generally support the adoption of the proposed forms, and believe that the requested information will assist the Commission with its intended information collections set forth in the *Second Report and Order*. However, the Wright Petitioners have made a few suggested changes to the proposed information collections to ensure that future mandatory data collections will fully assist the Commission and the public with their future review of the ICS industry to confirm the ICS providers' compliance with the Commission's rules.

DISCUSSION

A. FCC FORM 2300 – MANDATORY DATA COLLECTION.

As discussed in the *Second Report and Order*, the 2014 Mandatory Data Collection submissions by 14 ICS providers were substantially inconsistent, and the reported costs were overstated.⁵ The Wright Petitioners submitted a detailed analysis of the 2014 Mandatory Data Collection submissions, outlining several significant deficiencies that resulted in ICS providers substantially overstating their costs to provide ICS.⁶ In particular, the Wright Petitioners noted the following deficiencies:

- The ICS providers inconsistently allocated their costs among the four cost categories (Telecom, Equipment, Security, Other);

⁴ See 47 C.F.R. § 64.6060 (2016).

⁵ See *Second Report and Order*, 30 FCC Rcd at 12,790.

⁶ See *Wright Petitioners Ex Parte Submission*, filed Sept. 17, 2014.

- The ICS providers used different methodologies to allocate costs to facilities and payment methods;
- The ICS providers followed different approaches in determining direct and common costs;
- Based on these differences in reporting costs, there is a significant reason to believe that the ICS providers' costs are over-reported; and
- The absence of revenue information from the ICS providers prevents a reasoned review of whether the various methods to determine the cost to provide service are appropriate.⁷

The Commission largely agreed with our analysis, but decided to use the submissions as a "worst-case scenario" of the ICS providers' costs.⁸ In order to avoid a similar situation in the future Mandatory Data Submission, the Wright Petitioners respectfully request that the following changes be made to FCC Form 2300 prior to its adoption.

First, the instructions to the form indicates that a Description and Justification ("D&J") statement may be provided for "all data that requires clarification." In 2014, not all ICS providers submitted a D&J statement, which led to much confusion and the inability of parties reviewing the cost data to make an industry-wide analysis. The submission of the D&J should be a requirement, so that the Commission and interested parties are able to compare the data gathered from the ICS providers on an apples-to-apples basis. Therefore, the Wright Petitioners respectfully request that the Commission modify its instructions to FCC Form 2300 to specifically require each ICS provider to submit a D&J Statement.

Moreover, the instructions should be modified to require the ICS providers to provide an explanation in their respective D&J statements regarding the calculation of the rate of return, and its component inputs such as cost of capital. As the Wright Petitioners

⁷ *Id.*, pgs. 1-2.

⁸ *Second Report and Order*, 30 FCC Rcd at 12,790, nt. 171.

have previously noted, several ICS providers included costs that are not typically included in the calculation of cost of capital. By permitting parties to customize their inputs for calculating their respective rate of return, the Commission will permit ICS providers to continue to submit inconsistent and overstated cost figures to the Commission. Therefore, the Wright Petitioners respectfully request that the Commission provide a uniform standard for all ICS providers to follow in calculating their rate of return, which specifically details the permissible inputs.

Next, the Commission must require ICS providers to provide additional information regarding the determination of what costs are to be considered "direct" and "indirect" costs. As noted in the Wright Petitioners' analysis, ICS providers submitted wildly inconsistent cost studies based, in part, on their ability to self-determine what costs should be considered direct, and which should be considered common (now, "indirect").

To eliminate future confusion, the Wright Petitioners respectfully request that the Commission (i) modify the definition of "Direct Costs" and "Indirect Costs" and (ii) require the ICS provider to provide a breakdown of each category of Direct and Indirect costs per facility. Specifically, the Commission should modify its definitions as follows:

Direct Costs means any cost or allocation of cost set forth in an ICS Provider's accounts that is completely attributable to the specific service (e.g., ICS, CCPS) in question. Each Direct Cost shall be separately defined within the ICS Provider's Description and Justification submitted with this form, and the ICS Provider shall separately identify the categories of Direct Costs for each Facility, and provide the information as requested herein;

Indirect Costs means any cost or allocation of cost set forth in an ICS Provider's accounts that is not completely attributable to that service (e.g., overhead, depreciation, or other costs that are allocated among different products or services). Each Indirect Cost shall be separately defined within the ICS Provider's Description and Justification submitted with this form, and the ICS Provider shall separately identify the categories of Indirect Costs for each Facility, and provide the information as requested herein;

Additionally, the "Total ICS Data" table should be modified to request (i) ICS indirect costs, (ii) ICS indirect costs paid to affiliates, (iii) CCPS indirect costs, (iv) CCPS indirect costs paid to affiliates, (v) Collect ICS Calls' indirect costs, and (vi) Collect ICS Calls' indirect costs paid to affiliates.

Due to the inconsistent characterizations of "direct" and "common" (now "indirect") costs in the 2014 Mandatory Data Collection, the Commission should also modify the "Facility-Level ICS Data" tables to specifically request the indirect costs associated with each service that is provided to the correctional facility. Currently, the form only requests the direct costs, and the Commission must request the related indirect costs for each service to ensure that the ICS providers submit consistent information.

Finally, the draft form requests "Total ICS Costs" and "Total ICS Revenues" for each provider. While the form seeks additional information on the "total costs" for (i) ICS, (ii) credit card processing services, and (iii) collect calls, it does not request a similar breakdown of ICS revenues earned in these categories. To the extent that the Commission is requesting cost data for these categories, it must also request the revenue data to ensure that the Commission and the public are able to confirm the accuracy of the provided information. Also, because the Commission is collecting information regarding the video visitation services provided by each ICS provider, the Commission should require the submission of "Total Video Visitation Costs" and "Total Video Visitation Revenues," as well as a breakdown of the total direct costs and total indirect costs associated with the ICS provider's Video Visitation service. The requested information is especially warranted as ICS providers may use the same platform for ICS telephone and ICS video visitation services.

B. FCC FORM 2301(a) - ANNUAL REPORT FORM.

Generally, the draft FCC Form 2301(a) appears to request the information required under Section 64.6060(a) of the Commission's rules. However, the Wright Petitioners suggest that FCC Form 2301(a) be revised to reflect the current practice of ICS providers charging different per-minute rates over the duration of an ICS communication.

For example, some ICS providers will charge one rate for the first minute of an ICS communication, and then have a different per-minute rate for each subsequent minute.⁹ While this practice may be eliminated once the rates adopted in the *Order on Reconsideration* becomes effective,¹⁰ there is still the possibility that ICS providers will charge the maximum permissible per-minute rate for the first minute of an ICS communication, and then charge a different per-minute rate for each subsequent minute.

The proposed FCC Form 2301(a) requires that the reporting ICS provider provide the "per-minute rate" for intrastate, interstate, international, and video ICS communications, but it does not request that the ICS provider break-out the information regarding the "per-minute rate" in instances where the ICS provider charges a different per-minute rate during the duration of the ICS communication. As such, the Wright Petitioners respectfully suggest that the Commission modify the form to require ICS providers to provide the "per-minute" rate for each minute of the ICS communication to ensure that the Commission receives complete information from the ICS provider.

⁹ See, e.g., Second Amendment to Contract Between Aluchua County Board of County Commissioners and Securus Technologies, Inc., attached as Exhibit B to Wright Petitioners' Ex Parte Presentation, dated July 29, 2016, in WC Docket 12-375 (first IntraLATA minute is \$2.26, additional minutes are \$0.30 per minute. (<https://www.fcc.gov/ecfs/filing/107292858526367/document/1072928585263673773>)).

¹⁰ See *Rates for Interstate Inmate Calling Services*, Order on Reconsideration, FCC 16-602 (rel. Aug. 9, 2016). The revised ICS rates will become effective for ICS communications from prisons on Dec. 12, 2016, and for jails on March 12, 2017.

Moreover, the current draft of the FCC Form 2301(a) requests information regarding the Ancillary Service Charges charged by ICS providers. However, the draft form does not request information regarding any (i) Authorized Fees (as defined in 64.6000(b)) or (ii) Mandatory Tax or Mandatory Fee (as defined in 64.6000(n)), which are collected by an ICS provider and remitted to a federal, state, or local government. Recently, the Commission adopted an *Order on Reconsideration*, in part to address the Commission's conclusion that the "prohibition against mark ups that [the Commission] adopted in the [Second Report and Order] is an important part of our efforts to ensure that the rates and fees end users pay for ICS are fair, just and reasonable."¹¹ Therefore, the Wright Petitioners strongly urge the Commission to modify the Instructions and Section III of FCC Form 2301(a) to include a column for (i) Authorized Fees and (ii) Mandatory Taxes or Mandatory Fees, which are collected by ICS providers. By doing so, the Commission will be able to obtain a more complete picture of the "rates and fees" paid by ICS customers.

C. FCC FORM 2301(b) – ANNUAL CERTIFICATION FORM.

The Wright Petitioners do not have any suggested changes to the draft FCC Form 2301(b), and are satisfied that ICS providers will be submitting the information contained in FCC Form 2301(a) under penalty of perjury, and that a senior executive of the ICS provider will be held responsible for any deficiencies with respect to the requested data.

D. SECTION 64.6110 CONSUMER DISCLOSURE REQUIREMENTS.

Finally, the Wright Petitioners urge the Commission to implement the Consumer Disclosure Requirements set forth in Section 64.6110 as soon as possible. Without the

¹¹ *Order on Reconsideration*, ¶ 33.

implementation of this requirement in the *Second Report and Order*, it is exceedingly difficult for ICS consumers and the public to obtain accurate information regarding the "interstate, intrastate, and international rates and Ancillary Service Charges" charged by ICS providers. Because Section 64.6110 does not require that this information be provided in any particular form, the Wright Petitioners respectfully request that the Commission take all necessary steps to require ICS providers to comply with Section 64.6110 as soon as possible.

Respectfully submitted,

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