Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF PRISON POLICY INITIATIVE, INC. ON THIRD MANDATORY DATA COLLECTION

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

In furtherance of its efforts to address high prices and unreasonable practices in the ICS industry, the Commission has directed staff to conduct a mandatory data collection to gather information in support of further rulemaking. The draft instructions released by the Wireline Competition Bureau and Office of Economic and Analytics reflect substantial planning and subject-matter expertise. Prison Policy Initiative commends the Commission for conducting this data collection. In these comments, we offer five categories of independent suggestions for improvement of the data collection.

We begin by discussing ambiguities in the defined term "Inmate Calling Services" as currently drafted. We then discuss the interrelated terms "Company," "Accounting Entity," "Business Segment," and "Affiliate," and describe an unintentional loophole that would allow carriers to withhold complete information from the Commission. The two following sections contain suggestions for improving questions regarding ancillary services and site commissions, respectively. We conclude with a number of miscellaneous suggestions for clarifying the instructions and strengthening the design of the data collection.

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Pursuant to the Commission's Third Report and Order (the "Third R&O"),[1] and solicitation of public comments (the "Notice"),[2] the Prison Policy Initiative ("PPI") submits these comments regarding the proposed Third Mandatory Data Collection for Inmate Calling Services (the "Data Collection") that was released jointly by the Wireline Competition Bureau and the Office of Economics and Analytics (collectively, the "WCB/OEA").

The instructions and instruments that comprise the Data Collection clearly reflect the Commission's ongoing commitment to address high prices and other unfair practices in the inmate calling services ("ICS") industry. PPI supports the Commission's goals and thanks the WCB/OEA staff for their substantial work on this issue. While the Data Collection reflects years of learned experience, we feel that it could be strengthened by anticipating current and potential future practices that ICS carriers use to evade accountability. The following comments offer concrete changes that we encourage the WCB/OEA to make before finalizing the Data Collection. PPI offers five separate and independent categories of suggestions for the WCB/OEA's consideration. First, we discuss the definition of "Inmate Calling Services" and the ambiguous treatment of video calling. Second, we discuss how the definition of "Company" unintentionally gives carriers an opportunity to withhold complete financial information from the

[1] *In the Matter of Rates for Interstate Inmate Calling Services*, WC Dkt. No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking (May 24, 2021).
[2] 86 Fed. Reg. 54897 (Oct. 5, 2021).

Commission. Third, we suggest some potential improvements to the questions on ancillary services and revenues. Fourth, we review the questions concerning site commissions and how they could be improved. Finally, we conclude with a miscellaneous list of modifications that could help provide clarity and resolve potential ambiguities.

I. The Proposed Definition of "Inmate Calling Services" Perpetuates Confusion by Failing to Clarify the Proper Treatment of Video Calling

The draft Data Collection defines Inmate Calling Service as "a service that allows Incarcerated Persons to make calls to individuals outside the Facility where the Incarcerated Person is being held, regardless of the technology used to deliver the services."[3] This definition is subject to a patent ambiguity, however, because a "call" can consist of audio, video, or both. Refining the Data Collection to acknowledge the existence of video calling and other advanced technologies is justified from both a legal and an administrative perspective.

There are two interrelated issues of legal significance. First, although the Communications Act of 1934 does occasionally refer to specific technologies (like telephone exchange service), the Commission's grant of jurisdiction is not limited by these specific technologies, but rather applies to "communication by wire and radio."[4] ICS voice and video calling both entail the transmission of information by wire, and therefore video calling should be addressed in the Data Collection. Second, the comparatively recent statutory term "telecommunications" is deliberately broader than just voice telephony, encompassing any transmission "of *information* of the user's choosing, without change in the form or content of the information as sent and received."[5] ICS video calling easily meets the statutory definition of telecommunications: information (in the form of audio and video) is transmitted between points specified by the user and without change in form or content.

PPI encourages the Commission to assert regulatory jurisdiction over ICS video calling, and we encourage the WCB/OEA to design the Data Collection with an eye toward exercising

[3] Instructions at 8.
[4] 47 U.S.C. § 151.
[5] 47 U.S.C. § 153(50) (emphasis added).

such jurisdiction. At the same time, we acknowledge that some ICS carriers are likely to dispute the Commission's jurisdiction over video calling; however, that dispute does not prevent the mere collection of information because the Commission possesses authority to gather facts for the purpose of determining its own jurisdiction.[6] Although the D.C. Circuit Court of Appeals vacated the Commission's 2015 rule regarding video-calling data, that judicial ruling is not an obstacle to collection of video-calling information in the Data Collection for two reasons. First, the 2015 rule did not involve a one-time data collection, but rather imposed an ongoing annual reporting requirement regarding video-calling revenue.[7] In contrast, the forthcoming Data Collection is a targeted inquiry which, of necessity, must examine financial information concerning both regulated and unregulated services sold under bundled contracts. Accordingly, even if the Commission were to disclaim jurisdiction over video calling (an action that PPI would oppose), it can (and should) still collect related information for purposes of setting rates on regulated services. Second, the D.C. Circuit did not hold that the Commission lacked jurisdiction over video calling, but instead found merely that the Commission did not adequately establish its jurisdiction because it had failed to articulate how video calling constitutes communication by wire or radio.[8] As a general matter (and even more so for purposes of a one-time data collection), the record in this proceeding already contains ample evidence demonstrating that ICS video calling consists of the transmission of communications by wire.[9]

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[6] *Gov't of the Territory of Guam v. Sea-Land Service, Inc.*, 958 F.2d 1150, 1155 (D.C. Cir. 1992).

[7] Former 47 C.F.R. 64.6060(a)(4) (2015) (published at 80 Fed. Reg. 79179 (Dec. 18, 2015)).

[8] *Global Tel*Link v. FCC*, 866 F.3d 397, 415 (D.C. Cir. 2017).

[9] *See* Ex Parte filing of Vera Institute of Justice at 11 (14 of 15 states that implemented prison video calling required additional hardware including "new wiring") (Mar. 6, 2016); Allison Hollihan & Michelle Portlock, *Video Visiting in Corrections: Benefits, Limitations, and Implementing Considerations* at 25 (discussing "wiring and infrastructure" upgrades needed to accommodate video calling) (Nat'l Inst. of Corr. #029609, Dec. 2014) (*cited in* Comments of Global Tel*Link on Third FNPRM at 2, n.9 (Jan. 18, 2016)); Comments of Securus Tech. on Third FNPRM at 5 (disputing jurisdiction over video calling as a legal matter, but also citing a Securus official's concerns about outlays for "infrastructure deployment such as replacing inside wiring" (internal quotation marks omitted)) (Jan. 18, 2016)).

As a matter of administrative efficiency, the Data Collection is designed to collect data on regulated and unregulated services. Accordingly, collecting specific data on video calling does not constitute a conclusive jurisdictional determination, but is rather a simple exercise in designing an unambiguous survey instrument. To avoid inconsistent reporting by different carriers, PPI suggests revising the instructions to collect revenue and expense information on three categories of services: voice calling, video calling, and all other services.

II. The Proposed Definition of "Company" Does Not Necessarily Refer to a Discrete Legal Entity, Which Allows Reporting Entities to Selectively Present Incomplete Cost Data

The Data Collection laudably seeks to obtain granular cost data by requiring responding entities to "submit data both at the company-wide level and for each correctional facility [where the carrier operates]."[10] PPI supports this goal, but we are concerned that "company-wide data" does not necessarily mean complete data for an entire company. The potential confusion stems from four interrelated defined terms that describe carriers and related entities. The interplay between these terms as currently drafted provides ICS carriers with an opportunity to report misleading and incomplete data (either intentionally or through varying good-faith interpretations of the defined terms). One of these terms ("Company"), can actually mean selectively picked *parts* of a legal entity. PPI believes that the instructions would be clearer if the definition of Company was revised to mean a whole legal entity.

The four relevant terms, along with the current draft definitions, are shown in **table 1**. The "Accounting Entity" and "Affiliate" terms are important tools for determining parent-subsidiary transactions, and should be left in place. But the fact that a "Company" is defined as *part* of an entity creates a potential "blind spot" in the regulations that would allow some carriers to avoid providing full and complete information about the allocation of ICS and non-ICS costs.

[10] Notice, 86 Fed. Reg. at 54899.

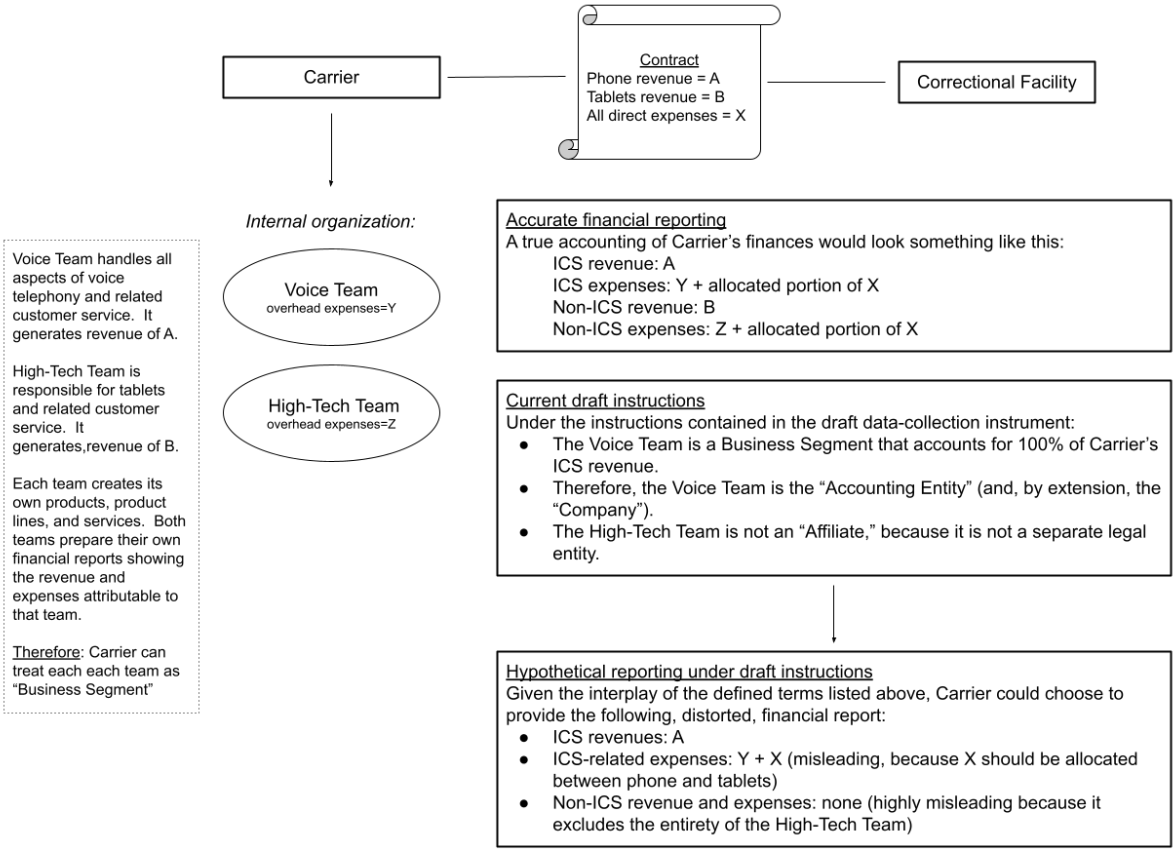
Table 1. Current Defined Terms

Defined Term	Draft Definition
Accounting Entity	The smallest group of separate Business Segments that collectively account for 100% of the Provider's ICS-Related Operations and ICS-related investments, expenses, and revenues.
Affiliate	Any two or more companies, partnerships, or other legal entities where (a) one entity directly or indirectly owns or controls the other or others, (b) a Third Party controls or has the power to control both or all, (c) the entities share common ownership or have interlocking directorates, or (d) the entities share employees, equipment, and/or facilities. For purposes of this definition, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10%.
Business Segment	A component of a Company that generates its own revenues and creates its own products, product lines, or services and for which a financial report is routinely prepared for management, shareholder, or creditor review.
Company	The Accounting Entity unless otherwise indicated.

The blind spot is best illustrated by a simplified hypothetical example of an ICS carrier ("Carrier") that holds one contract to provide voice telephone service and computer tablets to a correctional facility. Assume that Carrier organizes its operations into two teams, one of which is responsible for all aspects of voice telephone service (the "Voice Team") and the other of which handles computer tablets (the "High Tech Team"). As illustrated in **figure 1**, the hypothetical Carrier could use the draft definitions to avoid reporting any revenue from unregulated tablet services. Moreover, the Carrier could distort data by unreasonably allocating shared or common expenses to inflate the cost of providing voice calling. Narrative explanations of how responses could be skewed are shown in **table 2**.

If the WCB/OEA collects comprehensive data on regulated and unregulated services, it will be positioned to identify and correct for improper or misleading cost allocations. On the other hand, if responding carriers are able to withhold information due to ambiguous instructions, then the collected data will be substantially less useful.

Figure 1. Illustration of Hypothetical Carrier Organization and Reporting



Fortunately, there is a simple way to eliminate this potential loophole without extensively redrafting the WCB/OEA's carefully designed instructions. PPI respectfully suggests that "Company" be revised to mean "the legal entity that contains the Accounting Entity." Under this revised definition, the Data Collection could retain its current line of questions that are focused on operations of ICS-related business components, while also collecting complete data when asking for "company-wide" financial and operational information. Because comprehensive data on cost allocations are a critical component of the Data Collection, we urge WCB/OEA to make this suggested change and clarify that responding entities are required to provide complete data regardless of their views on the Commission's jurisdiction over certain services.

Table 2. Potential for Inconsistent or Incomplete Responses

Question	Opportunities for Confusion
IV(A)(9) – Non-ICS Business Segments	This question asks for numerous types of data concerning "non-ICS Business Segments." But a Business Segment is defined as a component of a "Company," which, in turn is defined as a group of separate Business Segments that account for ICS-related operations and revenue. Thus, when a single company is divided into operating segments (some of which do not account for any ICS revenues or expenses) those non-ICS segments are not "Business Segments." This happens because the definition of "Accounting Entity" (which is coterminous with "Company") looks for the *smallest* group of Business Segments that account for ICS activity, thereby excluding other segments.
IV(A)(11) through (14) – Non-ICS Affiliates	As described above, a business component with no ICS revenue can fall outside the definition of Business Segment. Such a component also falls outside questions IV(A)(11)-(14), because it is not an independent legal entity (and therefore not an Affiliate).
IV(C) – Company-Wide Information	The draft instructions require respondents to "assign, attribute, or allocate the reported *Company-wide* investments and expenses…among Inmate Calling Services, [ancillary services], and non-ICS Services in accordance with the cost allocation instructions [set forth in the instructions]" (emphasis added). But because "Accounting Entity" (and therefore "Company") is defined as "the *smallest* group of separate Business Segments that collectively account for 100% [of ICS activities]," the defined term "Company-wide" may not be the same as the entire legal entity that houses the ICS component(s).

III. Questions Concerning Ancillary Services and Revenue Should Use More Precise Terminology

PPI is particularly encouraged by the close attention paid to ancillary fees and services in the draft Data Collection. We have identified two issues where we believe the instructions would benefit from greater precision.

A. Questions Regarding Revenue-Sharing Agreements Could Benefit from Greater Specificity

In relevant part, the draft instructions define a Revenue-Sharing Agreement as "any agreement . . . between a Provider or any Affiliate and a Third Party, such as a financial institution, or between a Provider and any of its Affiliates that, over the course of the agreement, directly or indirectly results in the payment of all or part of the revenue received from the

provision of ICS or any Ancillary Service to the other party to the agreement."[11] The WCB/OEA may want to consider whether the breadth of this definition will yield useful information, or whether a more targeted definition would be beneficial. As an example, consider a standard merchant-services contract in which a financial institution agrees to process payment-card transactions for a carrier in return for a fee equal to a percentage of each transaction. The carrier, in turn, imposes an automated payment or live-agent ancillary fee on such transactions, consistent with the Commission's rules. Arguably, a portion of these ancillary fees is being paid to the financial institution (in the form of processing fees), and the contract therefore appears to qualify as a Revenue-Sharing Agreement under the current definition.

PPI believes the more troublesome practice is when a carrier contracts with an Affiliate or Third Party to provide services, and money flows *back to* the carrier from the Affiliate or Third Party. To the extent that the WCB/OEA wishes to focus on this type of arrangement, the definition of Revenue-Sharing Agreement could be refined to refer to a contract for services to be rendered by an Affiliate or Third Party, which also provides for payments to the Provider measured in reference to the Affiliate or Third Party's revenues.

Relatedly, section IV(C)(3)(b)(4) of the Data Collection asks detailed questions about Ancillary Services Revenue-Sharing Agreements. While this section appropriately asks for the total amount of revenue shared under each respective agreement, it does not directly ask the respondent to account for the total amount by recipient. The WCB/OEA may want to revise this question to specifically require respondents to account for the total shared revenue by specifying how much of that revenue was allocated to each party to the agreement.

B. The Sweeping Definition of "Third-Party Financial Transaction Fees" May Result in Overbroad Data that Obscure Important Facts

The draft instructions define Third-Party Financial Transaction Fees as "the exact fees, with no markup, that Providers of Inmate Calling Services are charged by Third Parties to transfer money or process financial transactions to facilitate a Customer's ability to make

[11] Instructions at 10.

account payments via a Third Party."[12] This definition suffers from the same infirmity that appears in 47 C.F.R. § 64.6000(a)(5), and which has led to the double recovery of transactional expenses.[13] Specifically, the Commission's rules regarding third-party transactional fees are designed to cover money-transmitter fees, but the Data Collection's reference to "process[ing] financial transactions" also encompasses amounts paid in payment-card interchange fees and compensation to payment processors. Depending on WCB/OEA's objectives, we suggest either: (i) defining Third-Party Transaction Fees as money-transmitter fees (perhaps incorporating concepts from the Treasury Department's definition of a money transmitter, *see* 31 C.F.R. § 1010.100(ff)(5)); (ii) defining what it means to "make account payments via a Third Party;" or (iii) leaving the definition as drafted but requiring respondents to distinguish between fees paid to money transmitters, fees paid to payment-card processing entities, and any other fees.

IV. Several Modifications Could Clarify Questions About Site Commissions

Correctional facility site-commission payments have been a major issue in the Commission's ICS proceedings for decades. The forthcoming Data Collection offers a major opportunity to refresh the record, and PPI believes that site-commission questions could be strengthened by making the following five changes.

First, change the name and definition of "Contractually Prescribed Site Commission." The draft instructions define a "Contractually Prescribed Site Commission" as "a Site Commission payment required pursuant to a contract negotiated between a Facility and a Provider."[14] This definition appears to be exclusive of "Legally Mandated Site Commissions," which are defined as commissions required by law.[15] But the current definition of "Contractually Prescribed Site Commission" is difficult to apply because as a matter of good contract drafting, ICS contracts frequently reiterate a carrier's obligation to pay Legally

[12] Instructions at 11.
[13] *See* Third R&O ¶ 327.
[14] Instructions at 8.
[15] Instructions at 9.

Mandated Site Commissions. Accordingly, just because a site commission is required pursuant to a contract does not mean that it isn't also required by law. To avoid confusion, PPI suggests changing "Contractually Prescribed Site Commission" to "Discretionary Site Commission" and changing the definition to "any Site Commission payment that is not a Legally Mandated Site Commission"

Second, modify the definition of "Monetary Site Commission." The Data Collection classifies site commissions by two qualitative types: in-kind and monetary. Monetary Site Commissions are defined as "a Site Commission that takes the form of a monetary payment," whereas In-Kind Site Commissions are those that are not Monetary Site Commissions.[16] These definitions are unclear about how to classify site commissions that are measured in monetary terms but do not entail the exchange of actual money. For example, a contract may require that a facility purchase certain equipment for $24,000 payable over two years, but further provide that for every month the contract remains in force, the carrier will credit $1,000 toward the facility's payment obligation. PPI believes that these types of arrangements should be classified as Monetary Site Commissions, and thus suggests that the definition be modified to encompass site commissions that take the form of a payment in money or an equivalent accounting entry.

Third, the Notice asks whether carriers should be required to "describe their in-kind payments in detail and assign them a dollar value."[17] PPI strongly supports such a requirement so that the Data Collection captures useful information on the nature and extent of in-kind commission payments.

Fourth, require a narrative description of how respondents allocate site-commission payments under bundled contracts. Section IV(C)(3)(a)(1)(a) asks responding entities to report "the percentage of . . . total Site Commissions paid by the Company during each Year of the Reporting Period that is attributable to the Company's ICS-Related Operations."[18] This invites

[16] Instructions at 9 and 8 respectively.
[17] Notice, 86 Fed. Reg. at 54900.
[18] Instructions at 22.

uncertainty in situations where a carrier holds a bundled contract for ICS and non-ICS services, and the contract provides for a lump-sum payment to the facility or a "minimum annual guaranteed" commission. PPI suggests that this question also require a narrative explanation of how the responding entity allocated the commission payments between ICS and non-ICS services.

Fifth, conform the structure of site-commission questions to match the wording of the defined term. Section IV(D)(2)(b) asks several questions about site commissions. Because section IV(D) is generally designed to gather facility-level information, the site commissions in subsection (2)(b) are organized around respondents' reporting of "the total amount of Site Commissions paid by the Company *to the Facility* during each Year of the Reporting Period."[19] Yet, as the definition of "Site Commission" anticipates, site commission payments are not always made to the facility—they are often made to a parent agency (e.g., a department of corrections) and could potentially be made to the general fund of the relevant governing body.[20] PPI believes that the facility-level focus of section IV(D)(2)(b) is correct, but the wording should match that of the defined term. Accordingly, the questions on facility-specific site commissions should identify the contract that governs ICS service at any given facility, and then ask about the amount and type of site commissions paid under that contract, regardless of whether the commissions were received by that facility or a different entity.

V. Other Suggested Ways of Improving the Data Collection

We have identified several other potential points of confusion or ambiguity in the draft Data Collection that are difficult to group into thematic categories, but which nonetheless relate

[19] Instructions at 33 (emphasis added).

[20] In relevant part, the Instructions define Site Commissions as "any form of monetary payment . . . that a Provider . . . may pay . . . *to an entity that operates a correctional institution, an entity with which the Provider of Inmate Calling Services enters into an agreement to provide ICS, a governmental agency that oversees a Facility, the city, the county, or state where a Facility is located, or an agent of any such Facility.*" Instructions at 11 (emphasis added).

to important topics. We respectfully offer the following suggested improvements for the WCB/OEA's consideration.

Lengthen the reporting period. The draft Data Collection seeks certain data covering 2019 through 2021, but asks for cost information only from calendar year 2021. The WCB/OEA asks commenters whether the reporting period should be modified.[21] PPI suggests that the cost reporting period be lengthened to three years (2019 through 2021) to account for year-to-year variations, particularly those related to the COVID-19 pandemic.

Clarify treatment of calls in jurisdictions that do not make users pay for calls. Several jurisdictions have entered into ICS contracts that provide for communications services free of charge to end users.[22] In these situations, carriers are still paid for calls, but payment comes from a correctional agency, not a consumer. The Data Collection includes several defined terms that depend on whether "payment is demanded" for a call,[23] but the definitions do not clarify whether payment must be demanded from an end-user or whether calls paid for by correctional agencies also qualify as "billed." Because greater detail is generally desirable (and because carriers providing calls free of charge to end users can likely segregate such calls in their reporting systems with minimal effort), PPI suggests the creation of three categories: traditional billed calls (paid for by end users), facility-paid calls (for which carriers receive payment from

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[21] Notice, 86 Fed. Reg. at 54898.

[22] *See* 2021 Conn. Acts. 54 (Reg. Sess. S.B. No. 972) § 1(b) ("[T]he commissioner [of correction] shall provide voice communication service to persons who are in the custody of the commissioner and confined in a correctional facility. The commissioner may supplement such voice communication service with any other communication service, including, but not limited to, video communication and electronic mail services. Any such communication service shall be provided free of charge to such persons and any communication, whether initiated or received through any such service, shall be free of charge to the person initiating or receiving the communication."); New York City Dept. of Corr. "Handbook for Detained and Sentenced Individuals" at 43 (Dec. 2019) ("All individuals in custody shall be permitted at the Department's expense, a total of twenty-one (21) minutes of calling time, every three (3) hours during lock-out periods while in custody."); Mayor of San Francisco, News Release (Jun. 13, 2019) (announcing new no-cost contract for calls from San Francisco Jail).

[23] Instructions at 7 and 11 (definitions of "Billed Calls," "Billed Minutes," "Billed Revenues," "Unbilled Calls," and "Unbilled Minutes, Unbilled Minutes of Use, and Unbilled MOU")

facilities or agencies), and unbilled calls (for which carriers receive no compensation from anyone).

Modify the definitions of "Single-Call and Related Services" and "Fees for Single-Call and Related Services." The definitions for single-call services and associated fees refer to situations where the payor "does not have an account with the Provider."[24] This requirement is slightly disconnected from the apparent intent of the definitions. Many ICS prepaid accounts are tied to certain facilities or incarcerated callers. Accordingly, a non-incarcerated person may have an account with a carrier but still choose to use single-call services to speak with certain callers who—for any number of reasons—are not "associated" with the prepaid account. The key fact is not whether the payor *has* an account, but whether an account is used to pay for a given call. Accordingly, these definitions would be more accurate if they referred to situations where "the called party does not pay for the call using an account with the Provider."

Provide clarity about the meaning of "Security Services." The first sentence of the definition for "Security Services" states that the term "means any security and surveillance system, product, or service that a Provider supplies to a Facility."[25] The next sentence, however, states that the term "include[s] *any service* that allows Incarcerated Persons to make telephone calls as permitted by the facility."[26] The second sentence's reference to "any service," does not state that the service must be related to security or surveillance. Accordingly, a literal reading of the second sentence could encompass a wide variety of non-security related services such as call provisioning, switching, and network management. PPI suggests that these two sentences be combined to clarify that he terms "security and surveillance" modify "service."

Gather information concerning customer prepaid funds. ICS carriers collect substantial sums from customers in the form of prepayments. Available evidence suggests that aggregate

[24] Instructions at 8 and 11 (definitions for "Fees for Single-Call and Related Services" and "Single-Call and Related Services").
[25] Instructions at 10.
[26] Instructions at 10-11.

customer prepayments are a material balance-sheet item for ICS carriers.[27] We encourage WCB/OEA to require reporting of customer prepayments in section IV(C)(1) of the Data Collection. We further suggest that responding entities be required to report whether they pay interest on such prepayments—the corresponding interest rate (which would be 0 if the carrier does not pay interest) should then be incorporated into the cost-of-capital calculations in section IV(C)(2)(c).[28]

Change "credit card" references to "payment card." Several portions of the draft Data Collection ask questions concerning "credit card processing" costs and revenues.[29] Because these questions all seem focused on credit *or debit* card payments, the instructions would be more accurate if the term "credit card" was replaced with "payment card."

Collect contract documents. WCB/OEA asks whether it should collect underlying contracts between carriers and correctional facilities.[30] PPI urges the WCB/OEA to collect contracts because the details in those documents can be critical to interpretating facility-level data. Because of the difficulty of anticipating, in advance, the facilities for which consultation of contractual provisions will be necessary, it would be simplest to collect all contracts that were in force during the reporting period. Because these contracts are critically important business documents, carriers undoubtedly store them in an easily retrievable format, and collecting and submitting the documents should not be unduly burdensome for responding entities.

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[27] For example, Securus's 2018 balance sheet reflects "Deferred revenue and customer advances" of $35.3 million, even though the company reported an unrestricted cash balance of only $12.9 million. GTL's 2019 balance sheet shows "Unearned Revenue" of $357.6 million compared to unrestricted cash of $663 million.

[28] *See* Notice, 86 Fed. Reg. at 54899 ("Should customer deposits be subtracted from the provider's net investment in assets, the base upon which an allowable rate of return is calculated?").

[29] *E.g.*, Instructions at §§ IV(C)(3)(b) and IV(D)(2)(c).

[30] Notice, 86 Fed. Reg. at 54901.

VI. Conclusion

The forthcoming Data Collection has the potential to provide a wealth of information that the Commission can use make much-needed modifications to current ICS rules. PPI comments the WCB/OEA for its work on designing the Data Collection, and we offer the above suggestions in the hope that the Data Collection yields the most complete and accurate information possible.

Respectfully submitted,

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