

**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 ANNUAL REPORTING
AND CERTIFICATION REQUIREMENTS FOR ICS PROVIDERS**

Pursuant to the solicitation of comments issued by the Wireline Competition Bureau (the “Bureau”),¹ Prison Policy Initiative (“PPI”) respectfully submits these comments concerning the Bureau’s proposed revisions to the annual reporting requirements for inmate calling services (“ICS”) providers. As a general matter, PPI strongly supports the revisions that the Bureau has made to the ICS annual report (Form 2301(a)) and associated instructions. The suggestions set forth below are intended to assist the Bureau in making the revised annual report format even stronger.

I. The Form Instructions Should Provide Clear Consequences for Ignoring the Bureau’s Guidelines Concerning Unreasonable Redactions

The single most important change to the annual reporting system is new language in section II.C of the proposed instructions stating that carriers should not redact facility names and populations, calling rates, or the amounts of ancillary fees. In previous reporting cycles, advocates and researchers have been unnecessarily hindered by some carriers’ frivolous redactions. As the Bureau has noted in the past, the rates and fees associated with any particular correctional facility cannot possibly be considered confidential under the Commission’s rules.² PPI thus supports all efforts to restrict unreasonable withholding of information contained in

¹ *Wireline Competition Bureau Seeks Comment on Revisions to Annual Reporting and Certification Requirements for ICS Providers*, WC Dkt. 12-375, Public Notice, DA 21-1583 [hereinafter “Solicitation of Comments”] (Dec. 15, 2021).

² See [Proposed Instructions](#) at 5, n.3 (collecting authority).

annual reports. We believe that one modest change could substantially strengthen the Bureau's commitment to transparency.

If a carrier wants to redact rates, fee amounts, or facility names and populations, it should have to publicly justify its request. Demonstrating compliance is a critical component of the Commission's ICS regulatory scheme, and it should be a public process to the maximum extent possible. Redactions deprive the public of insight into carrier operations, and therefore impair the credibility of the Commission's annual-reporting process. For reasons that the Bureau has already articulated, it is inconceivable that rates (charged to the *general public*) or facility names and populations would be properly subject to confidential treatment. If there is an unusual situation in which confidentiality is warranted for these categories of information (and it is nearly impossible to conjure such a scenario), then the carrier desiring to redact such information should be required to file a motion for confidential treatment, and that motion should automatically be subject to public notice and comment.³ Any annual reports that contain redacted rates, fee amounts, facility names, or facility populations, and which are not filed with a motion seeking confidential treatment, should be returned in the same manner as if they lack the required certification.⁴

II. The Bureau Should Require More Detailed Reporting Regarding Ancillary Fees

The current annual report instructions require carriers to “list the amount billed to consumers for each type of ancillary service charge that the provider assessed.”⁵ The proposed revised instructions direct carriers to “report the maximum amount per transaction billed to

³ PPI suggests a notice-and-comment process similar to that for petitions for waiver of rate caps. *See Rates for Interstate Inmate Calling Services*, WC Dkt. 12-375, [Third Report and Order, Order on Reconsideration & Fifth Further Notice of Proposed Rulemaking](#) [hereinafter “[Third R&O](#)”] ¶ 175 (released May 24, 2021).

⁴ *See* Proposed Instructions § I.B.2 (“Submissions will be rejected and returned for correction and resubmission if made without a completed form by an officer of the Provider that, based on information and belief formed after reasonable inquiry, the statements and information contained in the Report are accurate and complete.”).

⁵ [Instructions for Completing the Inmate Calling Services Annual Reporting Form](#) (FCC Form 2301(a)), section III.5 (Feb. 2020).

Consumers for each type of Ancillary Service Charge that you assessed.”⁶ In the context of variable fees, neither of these approaches is satisfactory, since they both mask the mechanics and true impact of these fees. For interested parties to truly understand the structure and amount of ancillary fees, specific information about the range of variable fees is necessary.

PPI respectfully suggests that the Bureau make three small changes to the ancillary-fee portion of the report:

1. For each type of ancillary fee, require carriers to specify whether the amount is fixed or if it varies based on the transaction amount (or other factors).
2. Require carriers to identify the third-party entity that charges any transaction fee passed through pursuant to 47 C.F.R. § 64.6020(b)(5). If any given contract allows for pass-through fees from multiple third-parties (depending on the payment channel, for example), then each third-party fee should be separately itemized.
3. For ease of data analysis, we anticipate that the Bureau is committed to retaining the current instructions directing carriers to list only the maximum amount of any given ancillary fee in the Excel template. To compensate for this, we suggest that carriers be required to provide a narrative explanation of how variable fees are calculated. In PPI’s experience, virtually all automated-payment, live-agent, paper-bill, and single-call fees are fixed (and would thus not require an accompanying narrative). For variable fees that are a certain percentage of a transaction amount, the answer could be as simple as specifying the percentage. For more complicated structures, an explanation could be as concise as “50¢ plus 2% of the payment amount.”

⁶ Proposed Instructions § IV.D.3.c.

With these changes, a hypothetical completed line from the ancillary-fee segment of the annual report would look something like this (not including narrative explanations of variable fees, which would be included in the separate Word template):

(1) Contract Identifier	(2) Name of Facilities Covered by Contract	(3) Ancillary Service Charges										
		Automated Payment Service				Third-Party Financial Transaction Services						
		(3)(a) Billed (Y/N)	(3)(b) Jurisdiction	Fixed or Variable	(3)(c) Max. Amt Billed for Ancillary Service Charges	(3)(d) Number of Times Each Charge has Been Assessed	(3)(a) Billed (Y/N)	(3)(b) Jurisdiction	Name of Third Party	Fixed or Variable	(3)(c) Max. Amt. Billed for Ancillary Service Charges	(3)(d) Number of Times Each Charge has Been Assessed
12345	Grant County Jail	Y	Both	Fixed	3.00	3124	Y	Both	Western Union	Variable	6.95	218
							Y	Both	MoneyGram	Variable	5.00	47
							Y	Both	Pay Near Me	Fixed	1.50	987

Given the increased attention that the Commission has placed on gathering information concerning third-party financial-transaction fees,⁷ we believe that the minimal burden associated with these changes is well justified.

III. Require Carriers to Report the Book Value and Fair Value of In-Kind Site Commission Payments

When soliciting public comments on the proposed revisions, the Bureau asks how carriers should be required to report the value of in-kind site commission payments.⁸ PPI believes the most effective approach is to direct respondents to report their adjusted basis in the transferred property (“book value”) as well as the estimated fair value as determined under generally accepted accounting principles.⁹

Market value is the most salient measure of in-kind site commission payments because it represents the actual value received by the transferee. But fair value also depends on somewhat malleable concepts and is thus potentially susceptible to some degree of manipulation. Accordingly, book value serves as an important quality assurance measure. In cases with a wide discrepancy between basis and fair value, interested parties may want to seek further details, and

⁷ Third R&O ¶¶ 214-216.

⁸ Solicitation of Comments at 4.

⁹ See Financial Accounting Standards Board, Accounting Standards Codification, Glossary (defining fair value as “The price that would be received to sell an asset . . . in an orderly transaction between market participants at the measurement date.”).

requiring disclosure of these two values would provide an important starting point for any such inquiry.

IV. Conclusion

The annual-reporting requirement is an important component of the Commission's work to address financial exploitation in the ICS market. These annual filings provide the most frequently updated factual record concerning the impact of the Commission's reforms and areas in need of additional attention. The changes proposed by the Bureau represent a major improvement in the form of ICS annual reports and PPI looks forward to these changes being implemented. We believe that the modest proposals set forth above would make the revised annual reporting structure even more valuable.

Respectfully submitted,

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