

§ 80.1453 [Corrected]

■ 8. On page 44589, in the second column, amendatory instruction 33.c is corrected to read: “c. In paragraph (d), removing the text “§ 80.1401” and adding in its place the text “§ 80.2”; and in paragraph (f)(1)(vi), removing the text “40 CFR 80.1401” and adding in its place the text “§ 80.2”.”

§ 80.1454 [Corrected]

■ 9. On page 44589, in the third column, amendatory instruction 34.i is corrected to read: “i. Revising paragraph (d) introductory text;”.

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*Principal Deputy Assistant Administrator,
Office of Air and Radiation.*

[FR Doc. 2023–16541 Filed 8–2–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket Nos. 12–375, 23–62; DA 23–638; FR ID [159602]]

2023 Mandatory Data Collection for Incarcerated People's Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final order.

SUMMARY: In this document, the Wireline Competition Bureau and the Office of Economics and Analytics (WCB and OEA) adopt an Order defining the contours and specific requirements of the forthcoming 2023 Mandatory Data Collection for incarcerated people's communications services.

DATES: The Order was adopted and released on July 26, 2023. The effective date of the Order is delayed indefinitely. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

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: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov, or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

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 the FCC's Order, DA 23–638, released on July 26, 2023. A full-text version of this Order is available at the following internet address: <https://www.fcc.gov/document/2023-ipcs-mandatory-data-collection-order>.

The effective date of the Order is delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date once the Office of Management and Budget (OMB) has completed any review required by the Paperwork Reduction Act (PRA).

Synopsis

I. Introduction and Background

1. By this Order, the Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) adopt instructions, a reporting template, and a certification form to implement the 2023 Mandatory Data Collection related to incarcerated people's communications services (IPCS). WCB and OEA's actions today are taken pursuant to the authority delegated to WCB and OEA by the Commission and largely implement the proposals set forth in the *2023 IPCS Mandatory Data Collection Public Notice*, with refinements and reevaluations responsive to record comments. *Rates for Interstate Inmate*

Calling Services, Notice of Proposed Rulemaking, 88 FR 27850, May 3, 2023 (*2023 IPCS Mandatory Data Collection Public Notice or Public Notice*); *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, Delegations of Authority; Reaffirmation and Modification, 88 FR 19001, March 30, 2023 (*2023 IPCS Order*); *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, Notice of Proposed Rulemaking, 88 FR 20804, April 7, 2023 (*2023 IPCS Notice*); *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act*; Martha Wright-Reed Act, Public Law number 117–338, 136 Stat. 6156 (Martha Wright-Reed Act or Act).

2. On January 5, 2023, the President signed into law the Martha Wright-Reed Just and Reasonable Communications Act, which expanded the Commission's statutory authority over communications between incarcerated people and the non-incarcerated, including “any audio or video communications service used by inmates . . . regardless of technology used.” The new Act also amends section 2(b) of the Communications Act of 1934, as amended (Communications Act), to make clear that the Commission's authority extends to intrastate as well as interstate and international communications services used by incarcerated people.

3. 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.

4. The Martha Wright-Reed Act contemplates an additional data collection by requiring or allowing the Commission to consider certain types of other costs necessary to its implementation. Prior to the enactment

of the Martha Wright-Reed Act, the Commission had sought provider data related to audio communications services provided to incarcerated persons on three occasions, as part of its ongoing efforts to establish just and reasonable rates for those services, while ensuring that providers are fairly compensated for such services. To ensure that it will have the data it needs to meet its substantive and procedural responsibilities under the Act, the Commission delegated authority to WCB and OEA to “update and restructure” its 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 and OEA collect “data on all incarcerated people’s communications services from all providers of those services now subject to” the Commission’s authority, including, but not limited to, requesting “more recent data for additional years not covered by the [Third Mandatory Data Collection].”

5. In accordance with this delegation, WCB and OEA developed proposals for the 2023 Mandatory Data Collection that updated and expanded the instructions and reporting templates from the Third Mandatory Data Collection, and issued a *Public Notice* seeking comments on all aspects of the proposed revisions to the collection. Concurrently, in accordance with the Paperwork Reduction Act of 1995 (PRA), WCB and OEA published a notice in the **Federal Register** seeking comment on potential burdens of the proposed reporting requirements. *Information Collection Being Reviewed by the Federal Communications Commission*, Notice and Request for Comments, 88 FR 27885, May 3, 2023.

6. WCB and OEA received comments from several IPCS providers, public interest advocates, and other interested parties in response to the *Public Notice*, and one comment in response to the PRA notice. WCB and OEA have thoroughly considered all of these filings in adopting the requirements for the final 2023 Mandatory Data Collection.

II. Discussion

A. Implementing the 2023 Mandatory Data Collection

7. Pursuant to their delegated authority, WCB and OEA adopt the 2023 Mandatory Data Collection Instructions, Word and Excel templates, and certification form as proposed in the *Public Notice*, with some exceptions discussed below. Commenters generally support the broad contours and specific requirements of the data collection as

proposed and do not challenge the proposal to retain the overall reporting structure and organization of the Third Mandatory Data Collection as the basis for this collection.

8. Commenters offer various suggestions that, in their view, would improve the proposed data collection. In light of these comments, WCB and OEA reevaluate some of their proposals and refine certain aspects of the instructions and templates, as set forth in greater detail below, while retaining the overall structure of the data collection as proposed. These refinements include modifying the treatment of video IPCS and safety and security measures, clarifying the reporting of costs related to site commissions, and revising certain proposed definitions. WCB and OEA conclude that the modifications “appropriately balance the need for ‘detailed and specific instructions and templates’ and the desire to avoid unduly burdening providers.”

9. In finalizing the requirements for the data collection, WCB and OEA do not resolve issues pending in the 2023 *IPCS Notice* as some commenters propose. Doing so would exceed the authority the Commission delegated to WCB and OEA. The *Public Notice* expressly foreclosed “seek[ing] additional comment on the questions and other issues previously raised in the 2023 *IPCS Notice* or in relevant prior Commission or Bureau notices,” and WCB and OEA do not address commenters’ proposals to the contrary in this Order. Instead, the purpose of the data collection is to provide the Commission with an objective foundation for addressing the issues it must resolve to implement the Martha Wright-Reed Act.

10. In the sections that follow, WCB and OEA first address the overall scope of the data collection and then turn to proposals to revise specific instructions.

B. Overall Scope of the Data Collection

1. Reporting Period

11. WCB and OEA limit the data collection to calendar year 2022, consistent with their proposal in the *Public Notice*. WCB and OEA find that the data from 2022 will provide the most pertinent and the best indicator of relevant costs. Some commenters propose that WCB and OEA expand the data collection reporting period beyond just 2022. Others argue that the burden of requiring additional years of data would “outweigh[] any material benefit.” WCB and OEA decline to expand the reporting period. Data from 2022 represent the most recent data available, and are therefore likely to be

more representative of future operations by IPCS providers than data from prior years. To the extent that data from prior years would be useful in determining just and reasonable rates, WCB and OEA already have data regarding audio IPCS, including investments, expenses, revenues, demand, site commission payments, and ancillary services charges and practices, from the Third Mandatory Data Collection. WCB and OEA recognize that those data are limited to audio IPCS, but find that the burdens associated with collecting video data for prior years would outweigh any potential benefit. In particular, the pandemic had a substantial impact on providers’ operations and likely accelerated the implementation of (and therefore increased the costs and revenues associated with) video IPCS as a substitute for in-person visitation, such that data from those prior years may not be representative of providers’ future operations. As a result, WCB and OEA find that collecting data solely for 2022 will best equip us to set rate caps that reflect providers’ operations going forward and avoid the burdens associated with collecting additional data that may not be representative or are already available for prior periods.

12. While WCB and OEA recognize the incremental benefits of having more comprehensive cost data, most of the categories of data that WCB and OEA seek in this data collection were addressed in the previous data collection, such that collecting these data from years prior to 2022 would be largely redundant. To the extent WCB and OEA seek new categories of data, the burden on providers to produce those data would be significant. Given the burdens already imposed by this revised data collection which are necessary to implement the new statute, as well as the comparatively shorter timeframe for submitting responses, WCB and OEA decline to impose an additional burden by expanding the reporting period as some commenters propose.

2. Cost Reporting and Cost Allocation

13. In the *Public Notice*, WCB and OEA proposed to adapt the cost reporting and cost allocation methodologies specified for the Third Mandatory Data Collection for use in the 2023 Mandatory Data Collection. No commenter challenges this overall approach or suggests fundamental changes to the proposals for applying those methodologies to video IPCS. Instead, commenters suggest relatively discrete modifications to the proposed instructions for reporting company-wide

cost data and for allocating reported costs among cost categories. After considering these comments, WCB and OEA adopt the cost allocation methodology essentially as proposed, with modifications to the instructions designed to help providers understand the cost allocation methodology and to obtain further information on how providers implement it. WCB and OEA also modify the instructions to establish, at the facility-specific level, the same reporting structure for capital assets and expenses that is in place at the company-wide level.

14. As a general matter, the changes to the cost reporting and cost allocation instructions reflect an understanding, from WCB and OEA's review of the Third Mandatory Data Collection submissions, that certain providers' internal accounting and recordkeeping systems limit those providers' ability to provide highly disaggregated cost data and to finely tune their cost allocation procedures. Given these limitations, the revised instructions generally require providers to describe in greater detail their implementation of the cost reporting and cost allocation instructions, rather than prescribe additional cost reporting and cost allocation requirements for which certain providers may not have the internal accounting systems needed to comply with such requests.

15. For example, WCB and OEA require providers to describe the types of costs they include in various capital and operating expense categories, rather than list the types of costs that are to be included in each category, as one commenter suggests. WCB and OEA also require providers to describe in greater detail the factors they use to allocate certain types of shared and common costs among audio IPCS, video IPCS, and nonregulated services, rather than specifying factors for providers to use in performing those allocations. WCB and OEA find that these revisions will help the Commission understand the nature of the reported costs, without imposing significant additional burdens on providers that would be unlikely to result in more useful information.

16. WCB and OEA reject, however, ViaPath's proposal that WCB and OEA permit providers to "use the allocation methodologies that best reflect [their] business and the way in which [they] keep[] [their] books and records as long as the provider[s] document[] and explain[] [such] methodologies in [their] MDC response[s]." The detailed cost allocation hierarchy set forth in the proposed instructions was carried forward from the instructions for the Third Mandatory Data Collection and,

as such, reflects the Commission's directive that the Third Mandatory Data Collection collect, "to the extent possible, uniform cost . . . data from each provider. In directing that WCB and OEA "update and restructure" that prior data collection, the Commission did not propose or suggest that WCB and OEA should undertake wholesale revisions to the core methodologies of the Third Mandatory Data Collection by allowing each provider to devise its own allocation methodology. As the Wright Petitioners point out, allowing providers to devise their own cost allocation methodologies in the previous data collection led to "large discrepancies between costs allocated towards capital expenses and operating expenses," with providers assigning costs inconsistently among the categories provided and reporting nonregulated service costs as inmate calling services costs. Allowing providers to use their own allocation methodologies also would substantially increase the back-end burden on all parties that want to process and analyze the reported data, because of the extent and complexity of the adjustments that would be necessary to correct for inconsistencies among providers' responses. The cost allocation hierarchy set forth in the instructions provides a necessary and workable framework within which to standardize and compare the data submitted, while, as WCB and OEA recognize above, affording providers flexibility to implement the cost allocation instructions in a manner that reflects their accounting and recordkeeping systems.

3. Overall Reporting Categories

17. WCB and OEA adopt their proposal 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. WCB and OEA find, subject to certain refinements related to safety and security measures, that these categories are well-suited to provide the Commission with the information it needs to comply with its ratemaking responsibilities under the Communications Act and the Martha Wright-Reed Act without unduly burdening providers.

18. WCB and OEA decline to require providers to subdivide their audio and video IPCS costs into more discrete categories based on the type of audio or video service being provided, as some parties suggest. While WCB and OEA recognize that video IPCS costs may vary based on the equipment used to provide the service, WCB and OEA find

that the best way to address this possibility is to ask providers to report the per-unit costs of the devices used for video IPCS. This information, combined with the requirement that providers report their video IPCS costs on a facility-by-facility basis while describing the video services provided at each facility, should provide sufficient information to measure any cost differentials among different video services without imposing on providers the burden of subdividing video IPCS costs into more discrete categories.

19. WCB and OEA adopt their proposal to allow, but not require, providers to subdivide their investments and expenses for audio IPCS, video IPCS, safety and security measures, and ancillary services between interstate/international and intrastate services. While WCB and OEA recognize that providers likely experience "no meaningful difference[s]" between the costs of providing interstate/international and intrastate IPCS (other than the costs of terminating audio communications in foreign destinations), WCB and OEA find this option properly allows providers the flexibility to inform the Commission if they do incur different costs based on the jurisdictional nature of the services they provide.

4. Safety and Security Measures

20. WCB and OEA adopt their proposal to require providers to allocate the annual total expenses they incurred in providing safety and security measures among seven categories using the provider's best estimate of the percentage of those expenses attributable to each category. After considering the comments regarding this proposed allocation process, WCB and OEA modify the instructions for this allocation to make them clearer and more comprehensive.

21. Some providers take issue with WCB and OEA's proposed seven-category framework for reporting safety and security measure costs, claiming that their internal accounting systems do not align with these categories and that providers will have difficulty allocating their costs in the manner proposed. WCB and OEA do not find these arguments persuasive. As Securus concedes, the cost categories WCB and OEA proposed are similar to categories employed in the Third Mandatory Data Collection. Accordingly, WCB and OEA find, as they did with the Third Mandatory Data Collection, that the proposed categories provide a comprehensive and workable framework for dividing safety and security measure costs into reasonably

homogenous groupings that “should capture all [safety and] security costs,” particularly with the addition of multiple examples of costs for each category. To the extent that providers make measures available that do not fit within the first six categories, the data collection also includes a catch-all category for “Other Safety and Security Measures.”

22. The Martha Wright-Reed Act requires the Commission to consider “costs associated with any safety and security measures necessary to provide” IPCS in setting IPCS rates. While the commenters present sharply divergent views as to whether providers should be allowed to recover the costs of various types of safety and security measures through their rates, the purpose here is to ensure, to the extent consistent with the providers’ internal accounting and recordkeeping, that the data collection generates, in a timely manner, sufficient information for the Commission to implement “whatever decision it makes regarding the necessity of safety and security measures.” This necessarily requires tradeoffs between pinpointing the costs of each safety and security measure providers offer and the providers’ ability to produce (and the Commission’s ability to process) highly disaggregated safety and security measure cost data within the 18 to 24 month statutory timeframe. WCB and OEA find the proposed reporting structure and associated categories, modified as described below, to be the most effective means of balancing these competing considerations.

23. One commenter claims that the proposed categories “will not provide a full or accurate picture of how safety and security costs are associated with the service offering,” while other commenters propose that WCB and OEA should “provid[e] examples and or definitions . . . of certain security services and costs that would fall under the seven categories,” and that the required safety and security cost data should, in general, be more granular. The proposed instructions already include multiple examples of safety and security measures that fall within each of the seven categories. WCB and OEA find that these lists, as revised in response to the comments, are sufficiently comprehensive to allow providers to sort their safety and security measures into the categories WCB and OEA have established. However, because some commenters may not have understood the examples WCB and OEA provided, they have reorganized the relevant instructions to simplify them and increase their clarity. Specifically, WCB and OEA modify both

the company-wide and the facility-by-facility instructions to first require providers to assign each of their safety and security measures to one of the seven listed categories and second to allocate their aggregate costs of providing safety and security measures among these categories.

24. In addition, WCB and OEA give providers the option to supplement what WCB and OEA require them to submit should they determine that more specific categories are needed to reflect their operations. Specifically, when allocating these costs, providers may divide the seven listed categories into subcategories of their own choosing, and thereby report costs in a more detailed manner. WCB and OEA find that allowing for further subdivision will better enable providers to submit a “full [and] accurate picture” of their costs in a way that “meaningfully distinguish[es] among these costs,” while also retaining the uniform reporting structure that is necessary for us to effectively compare cost data among providers. WCB and OEA also adopt a suggestion that they instruct providers to assign any safety and security measure that does not precisely match any of WCB and OEA provided examples to the category that provides the best fit, and to allocate the costs of such measures accordingly. Directing providers to categorize services in this manner will give them additional flexibility in applying the categories to their own internal accounting structures.

25. To further help providers allocate safety and security costs among the established categories, WCB and OEA modify the instructions to include additional and guidance. These changes address certain commenters’ concerns about their ability to allocate their security costs among each category within the seven-category reporting framework without further guidance. However, given providers’ concerns with their ability to implement the seven-category framework, WCB and OEA decline to require that the expenses allocated to each of the seven categories be further allocated among the various safety and security measures within each category. Conversely, WCB and OEA also decline to adopt Pay Tel’s proposal that the collection be limited to “data regarding Safety and Security Measures associated with distinct and separate ‘system[s], product[s], or service[s]’ which are provided as ancillary components to the IPCS offering.” As an initial matter, those measures are effectively encompassed within the categories. To the extent that Pay Tel is proposing that WCB and OEA

only collect such data, that approach would require that WCB and OEA prejudge which safety and security measures are “necessary,” which would be beyond the scope of WCB and OEA’s delegated authority.

26. WCB and OEA also decline to subdivide the safety and security measures reporting category into different real-time and non-real-time subcategories, as one commenter urges. WCB and OEA find that the granularity already included in the safety and security reporting requirements is sufficient to provide the Commission with the data it will need to set just and reasonable rates caps for IPCS. The additional burden more subdivision would impose on providers outweighs any potential benefit of further disaggregation.

27. One commenter observes that “there are no safety and security costs associated with ancillary services of the type contemplated” for IPCS. WCB and OEA agree that this is likely the case for most providers, but those providers can simply enter “0” in the appropriate Excel template cells. Accordingly, WCB and OEA will include the proposed inquiries asking providers to report any safety and security costs they incur in connection with their ancillary services. WCB and OEA find that this approach will accommodate potential variation among providers’ practices without burdening any provider.

28. Lastly, WCB and OEA supplement questions in the Word template in order to obtain additional information on providers’ safety and security measures. Commenters discuss certain nuances that may apply to the implementation of safety and security measures and consequent cost allocation issues that are not fully addressed by the questions proposed (e.g., differences based on infrastructure and devices used to provide IPCS, and circumstances in which safety and security services apply to both IPCS and nonregulated services). WCB and OEA agree with these commenters on the need to seek additional information from providers regarding their safety and security measures and attendant practices. Commenters also dispute the extent to which “providers’ accounting systems” are—or are not—“designed to track ‘safety and security’ costs.” Given this ambiguity as to providers’ accounting practices for safety and security measures, particularly in light of providers’ concerns about their ability to apply their accounting systems to the categories WCB and OEA proposed, WCB and OEA find that additional information concerning providers’ accounting practices and how they

allocate their internal data among the seven categories will assist the Commission in accurately determining the costs of providers' safety and security measures and distinguishing between "essential and non-essential costs." Accordingly, WCB and OEA modify the instructions and Word template to obtain information on these subjects, in order to provide the Commission with a more comprehensive and accurate understanding of providers' implementation of, and accounting and recordkeeping practices regarding, safety and security measures.

5. Video IPCS

29. WCB and OEA adopt the majority of their proposals related to video IPCS, but make targeted changes to capture more complete information. As the record now makes clear, the costs of providing video IPCS likely vary depending on the specific infrastructure, devices, methods, technologies, and features used to provide those services. WCB and OEA find that this data collection should attempt to capture those variations at a more granular level than WCB and OEA proposed, to the extent possible without unduly burdening providers. Informed by the record compiled in response to the *Public Notice*, WCB and OEA agree that additional information concerning video IPCS would assist the Commission in its ratemaking efforts and therefore add general inquiries regarding the technical requirements of the providers' video IPCS offerings, the infrastructure used to provide those services, and the reasons for and costs of any data storage associated with those services, among other matters.

30. *Service Parameters.* To help the Commission understand the providers' video IPCS offerings, WCB and OEA require providers to describe in detail each video service they provided during 2022. Providers must also identify, among other matters, each transmission technology used to provide each type of video service they provided to incarcerated people, provide any information they have regarding service parameters and performance indicators, and describe any steps they take to monitor whether the service functions properly. WCB and OEA also require providers to state whether they, as opposed to the correctional facilities, provide any broadband connection needed for the providers' IPCS offerings; the extent to which they use those connections to provide audio as well as video IPCS; and the extent to which facilities use those connections for their own communications.

31. *Infrastructure.* WCB and OEA require providers to describe the infrastructure they used to provide video IPCS, including any infrastructure that is located within correctional facilities. WCB and OEA find that information on the type of infrastructure facilities deployed and its technical capabilities, to the extent the providers have that information, will help the Commission evaluate providers' video IPCS offerings. Accordingly, WCB and OEA have added a question to the Word template that directs providers to explain whether they, as opposed to the facilities they serve, provide and maintain any infrastructure that is located within facilities. WCB and OEA also direct providers to submit any information they have on the nature and capabilities (e.g., speed and latency) of the video IPCS infrastructure located within the facilities they serve, including use and general capability of Wi-Fi routers, if known.

32. *Data Storage.* WCB and OEA add additional inquiries to the Word template designed to capture data on the storage costs associated with video IPCS in comparison to audio IPCS, as well as other information regarding data storage policies and practices. Based on information in publicly available contracts, the Wright Petitioners suggest expanding the data storage-related questions to request information on data retention policies and the data processing and analysis costs associated with video IPCS. WCB and OEA agree that additional questions regarding the quantity of data stored and the storage period will help the Commission understand the costs associated with video IPCS. Likewise, if, as the Wright Petitioners suggest, data storage costs vary depending on the storage method and underlying technology used, information on those factors may also be useful to help the Commission discharge its ratemaking responsibilities. WCB and OEA therefore include an additional narrative request asking providers to explain these matters. WCB and OEA find that allowing providers to submit a narrative response to this request imposes less of a burden on providers than would a more granular approach, such as requiring providers to report this information on a facility-by-facility basis.

33. *Other Video IPCS Information.* WCB and OEA also add questions about how providers market and sell video IPCS to consumers. These questions include inquiries regarding whether video IPCS is offered as a stand-alone service or is "bundled" with other services. WCB and OEA also include

questions asking whether video IPCS rates are based on minutes of use, number of communications, or data usage, and whether there are any limitations or conditions on how incarcerated people may use video IPCS. WCB and OEA find that these questions provide the best approach for ensuring that the data collection captures information on providers' rate structures and practices affecting video IPCS.

34. WCB and OEA decline to adopt one commenter's proposal that WCB and OEA require providers to "track and report usage data for apps that are not free to the end-user." Although such usage data might be helpful in providing context for the provision of IPCS on tablets and any associated costs, that is not the focus of this collection. Rather, WCB and OEA directly address the fundamental elements of providing IPCS on tablets by requiring providers to submit data on video sessions, audio minutes, and inputs for providing audio and video IPCS (e.g., hardware, software, and network connectivity), as well as costs exclusively attributable to IPCS versus other services. WCB and OEA find that these questions are sufficient to address, and more directly target, any issues that may be particular to the provision of IPCS on tablets.

6. Site Commissions

35. As a general matter, WCB and OEA adopt the questions concerning company-wide and facility-level site commissions proposed in the *Public Notice*, which were largely based on the Third Mandatory Data Collection, as well as the proposed updates to the related instructions and templates. Those updates include additional questions seeking information on interstate, intrastate, and international site commissions, as well as information concerning site commissions for both audio and video services. No commenter opposed the adoption of this general framework. The Wright Petitioners additionally propose that the instructions include a diagram or chart explaining the structure of the site commission data requests. WCB and OEA agree that visual aids may improve the accuracy and consistency of the data reporting by helping providers better understand how to allocate their data among the different categories of site commissions. Accordingly, WCB and OEA have added diagrams to the instructions.

36. WCB and OEA decline, however, to adopt the related request that they add instructions requiring providers to report specific details regarding each type of site commission. The updated

instructions and templates already require providers to submit this level of detail at the facility-level. For instance, with regard to what qualifies as a legally mandated site commission, the instructions require that providers include a citation to the authority requiring such payment in the attached Excel template. Moreover, for in-kind site commissions, the Word template requires providers to describe “each payment, gift, exchange of services or goods, fee, technology allowance, or product provided to the Facility that [the provider] classifies as an In-Kind Site Commission payment” for both legally mandated and contractually prescribed site commissions. Thus, the instructions and templates are already designed to provide the level of transparency sought.

C. Specific Instructions

1. Definitions

37. Commenters generally support or do not comment on the proposed definitions. WCB and OEA therefore adopt the proposed definitions with certain modifications, as explained below.

38. *Audio IPCS and Video IPCS.* The proposed instructions included a definition of “IPCS,” but did not separately define “Audio IPCS” or “Video IPCS.” WCB and OEA adopt a request that they define each of these terms because cost allocation is required “between audio IPCS and video IPCS,” and defining the relevant terms will help avoid potential confusion in making this allocation. WCB and OEA therefore add the following definitions to the instructions:

Audio IPCS means, for the purpose of this data collection, all services classified as inmate calling services within the meaning of 47 CFR 64.6000(j), including (a) Interconnected VoIP; (b) Non-interconnected VoIP; (c) all Telecommunications Relay Services (TRS), including the use of a device or transmission service to access TRS; and (d) all point-to-point video services made available to incarcerated people for communication in American Sign Language (ASL) with other ASL users.

Video IPCS means any video communications service used by incarcerated people for the purpose of communicating with individuals outside the correctional institution where the people are incarcerated, regardless of the technology used. It typically includes an integrated audio component, and excludes all services classified as Audio IPCS, as well as Other Products and Services, such as one-way entertainment, educational, religious, vocational, and instructional programming.

39. WCB and OEA decline to restrict the definitions of Audio IPCS “to voice-only calling services using either circuit

switched or VoIP technology” and Video IPCS “to real-time remote or on-site video visitation services,” as one commenter suggests. The Martha Wright-Reed Act unequivocally expands the definition of IPCS to include advanced communications services. Advanced communications services broadly include “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.” WCB and OEA therefore do not limit the definitions of Audio IPCS or Video IPCS to specific types of technology used to transmit the services.

40. *Safety and Security Measures.* WCB and OEA proposed a broad definition of “safety and security measures,” in accordance with the Martha Wright-Reed Act’s directive 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. This approach was designed to allow the Commission the broadest possible view of the costs that providers and facilities incur. WCB and OEA agree, however, with Pay Tel’s observation that the proposed definition is “so broad as to encompass the entirety of IPCS.” To eliminate this issue, WCB and OEA revise the definition of “safety and security measures” to read:

[A]ny safety or security surveillance system, product, or service, including any such system, product, or service that: helps the Facility ensure that Incarcerated People do not communicate with persons they are not allowed to communicate with; helps monitor and record on-going communications; or inspects and analyzes recorded communications. Safety and Security Measures also include other related systems, products, and services, such as a voice biometrics system, a PIN system, or a system concerning the administration of subpoenas concerning communications. The classification of a system, product, or service as a Safety and Security Measure does not mean that it is part of a Provider’s IPCS-Related Operations.

41. *Provider, Contractor, and Subcontractor.* In the proposed definitions, WCB and OEA sought to clarify the relationship between two types of IPCS providers—contractors and subcontractors—to provide notice of filing obligations to entities that may not have previously been subject to the Commission’s authority. WCB and OEA conclude, however, that further revisions are necessary. Pay Tel suggests that the Commission “should take steps

to ensure that it is apprised of situations where multiple entities are involved in providing a covered service to avoid instances of incomplete or duplicated data.” While it does not explain what the Commission should do in the event multiple entities are involved in the provision of IPCS, WCB and OEA agree that clarification of the definitions of “Provider” and “Subcontractor” will ensure WCB and OEA receive the data necessary to achieve “insight into overall service costs.” WCB and OEA therefore amend the proposed definitions of “Provider” and “Subcontractor” to make clear that any contractor or subcontractor that is providing IPCS, regardless of whether that entity has a contract directly with the facility or with another provider, is considered to be a provider for the purposes of the data collection.

42. *Facility.* In the proposed instructions, WCB and OEA proposed including definitions for several synonyms for the term “Facility,” given the apparently interchangeable use of different terms in both the Martha Wright-Reed Act and the Commission’s rules. One provider suggests eliminating the four separate terms used “to reference a prison or jail,” and points out that “the Instructions themselves repeatedly use the term Facility.” WCB and OEA agree that the inclusion of these terms is redundant and could cause confusion. WCB and OEA therefore delete the defined terms “Correctional Facility,” “Correctional Institution,” and “Detention Facility” and edit the definition of “Facility” to include these terms synonymously. WCB and OEA likewise make conforming edits to refer only to “Facility” throughout the final instructions, templates, and certification form.

43. *Miscellaneous Definitional Edits.* WCB and OEA have also made various administrative revisions to the definitions. These include grammatical corrections, consistent use of terms, and other non-substantive edits.

2. Facility-Specific Data

44. WCB and OEA adopt, in modified form, the suggestion that WCB and OEA require providers to indicate via a checkbox “whether [facility-specific] data submitted is at the facility level or has been allocated from a contract, in order to ensure that contract-level data is correctly allocated to the facility level.” WCB and OEA find that obtaining this information may help eliminate confusion when attempting to understand how providers arrived at the amounts reported in their cost categories. However, WCB and OEA

determine that this area is too nuanced for a checkbox and therefore revise the Word template to direct providers to identify whether the facility-specific data they report were recorded at the company, contract, or facility level. This requirement will clarify whether data were recorded at the facility-level or whether they have been allocated and must be justified. Because this step would be helpful and impose only minimal burdens on reporting providers, WCB and OEA add this question to the Word template.

3. Telecommunications Relay Services Costs

45. WCB and OEA amend the Word template to allow providers the option of providing information regarding any cost increases resulting from the TRS requirements adopted in the *2022 ICS Order*. In that order, the Commission adopted several requirements to improve access to communications services for incarcerated people with communication disabilities. IPCS providers must provide incarcerated people with communications disabilities with access to all relay services eligible for TRS Fund support in any correctional facility where broadband is available and where the average daily population incarcerated in that jurisdiction totals 50 or more persons. It also required that where inmate calling service providers are required to provide access to all forms of TRS, they also must allow ASL direct, or point-to-point, video communication. The Commission clarified and expanded the scope of the restrictions on inmate calling service providers assessing charges for TRS calls, expanded the scope of the required Annual Reports to reflect the above changes, and modified TRS user registration requirements to facilitate the use of TRS by eligible incarcerated persons. Providers have had to comply with certain of these requirements (*i.e.*, the limitations on charging) since they became effective earlier this year, while compliance with other requirements is mandated beginning January 1, 2024, or, in some cases, pending approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act.

46. Because this data collection seeks data only for calendar year 2022, providers' submissions will not fully reflect any additional costs they incur in complying with the new TRS requirements. In recognition of this fact, Securus and Pay Tel urge that providers be given the option of submitting data estimating the costs of implementing the new requirements, even if those costs were not incurred in calendar year 2022.

WCB and OEA find this suggestion reasonable and therefore modify the Word template to allow, but not require, providers to report their estimates of their annual incremental costs of complying with the TRS requirements adopted in the *2022 ICS Order*, to the extent those costs are not reflected in their data for 2022. Annual incremental costs of TRS compliance are those the provider would not have incurred but for its compliance with these TRS requirements. Shared and common costs will already be reflected in the data providers will be reporting for 2022 and thus should be excluded from the annual incremental costs of TRS compliance.

4. Facility Costs of Providing Safety and Security Measures

47. WCB and OEA adopt their proposal to require providers to report any verifiable and reliable 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, as well as any verifiable and reliable information on other facility-incurred costs that are not directly related to safety and security. Any such information will provide the Commission with a more comprehensive picture of the total costs of providing IPCS. Pay Tel has encouraged us to include facilities' costs in any effort to calculate the costs of IPCS. It argues that facilities incur recoverable costs "in making IPCS available" and supports WCB and OEA's "efforts to document and acknowledge these costs."

48. The record also suggests, however, that providers are "highly unlikely" to have such information on facilities' costs. One commenter proposes that the Commission develop a reporting template for use by facilities and seek this information directly from facilities. Although WCB and OEA acknowledge that facilities may be more likely to have access to this information than providers, collecting data directly from facilities would raise a number of difficulties. Any attempt to seek data directly from facilities would arguably exceed the authority delegated to WCB and OEA by the Commission regarding this data collection. Attempting to expand the data collection to include facilities would also pose significant practical challenges. Doing so would greatly expand the group of entities subject to the data collection and would multiply the burdens imposed by the collection. Furthermore, developing a template, seeking comments, and collecting responses from facilities

would significantly delay the data collection and could prevent the Commission from meeting the statutory timeframe established by the Martha Wright-Reed Act. Accordingly, WCB and OEA decline to adopt this proposal. WCB and OEA emphasize, however, that the Commission has repeatedly encouraged correctional officials to submit data on their IPCS-related costs, including any costs they incur for safety and security measures.

49. Finally, WCB and OEA adopt their proposal to require providers to be able to produce, on request, documentation sufficient to explain and justify the accuracy and reliability of any data they report regarding the costs incurred by facilities. This requirement will enable the Commission to evaluate the reliability and accuracy of any such data. It will minimize burdens by not requiring the submission of such documentation with providers' responses but only requiring the retention and subsequent production of the relevant documents upon request—documents which providers would likely retain in the normal course of business. No commenters challenged this aspect of the proposal. WCB and OEA find that this requirement will help ensure that the Commission will be able to evaluate the accuracy and reliability of the data submitted while adding only a minimal additional burden on providers.

5. Admissions, Releases, and Turnover Rates

50. WCB and OEA modify the Excel template to make the questions regarding facility-specific total admissions, total releases, and weekly turnover rates optional. In the *Third Mandatory Data Collection Order, Third Mandatory Data Collection for Calling Services for Incarcerated People*, Final Rule, 87 FR 16560, March 23, 2022, WCB and OEA identified these metrics as important to helping the Commission correct for the possibility that other population metrics, such as average daily population, might not fully account for all the costs of providing audio IPCS at smaller jails. WCB and OEA therefore required the submission of facility-specific data on admissions, releases, and weekly turnover rates as part of the Third Mandatory Data Collection and, in the *Public Notice*, proposed to incorporate that requirement into the 2023 Mandatory Data Collection. However, WCB and OEA's review of providers' responses to the Third Mandatory Data Collection, as well as comments on the proposed instructions, make clear that requiring these data would impose a significant

burden on providers without producing meaningful results, due in large part to difficulties providers encounter in obtaining accurate data from correctional officials.

51. As one commenter explains, “IPCS providers do not track or have adequate information to respond to questions about ‘weekly turnover,’ ‘total admissions,’ or ‘total releases’ at each correctional facility they serve.” Another provider explains that it has “no way of gauging the accuracy of this data or whether the sample size was useful.” In attempting to balance competing considerations regarding the potential importance of these data and the relative inaccessibility, WCB and OEA make the reporting of this information optional. This approach will reduce the burdens on providers, while still allowing them to report this information where possible.

6. Bundling

52. WCB and OEA modify the Word template to obtain specific information on the extent to which providers bundle IPCS with nonregulated services and on the steps providers employ to ensure that the costs of their nonregulated services are not allocated to IPCS or associated ancillary services. Although WCB and OEA did not explicitly include questions about bundling in their proposals, in the *Public Notice*, WCB and OEA sought comment on whether there were “additional data” that providers should be required to submit in response to the Mandatory Data Collection. The Wright Petitioners explain that bundling data are needed because providers offer different services that “may or may not be bundled together when reporting the data,” potentially inflating the costs reported for regulated services.

53. WCB and OEA agree that data on service bundles will assist the Commission in understanding what services are provided and how they are provided, and, most importantly, in establishing just and reasonable IPCS rates. WCB and OEA therefore add questions to the Word template that direct each provider to report, among other information, whether it offers regulated and nonregulated services as a bundle and, if so, to identify each of the components included in the bundle; to identify which components are regulated or nonregulated and the standalone price of each component; to state whether bundling affects the provider’s overall costs and, if so, how; and to indicate whether the provider’s bundling practices vary by facility or by contract.

7. Financial Reports

54. WCB and OEA adopt their proposal to require all providers to submit audited financial statements or reports for 2022, or, in the absence of an audited financial statement or report, similar financial documentation for 2022, to the extent produced in the ordinary course of business.

D. Timeframe for Provider Responses to the Data Collection

55. In the *Public Notice*, WCB and OEA sought comment on their proposal to require providers to file their responses to the data collection within 90 days of the release of this Order. The proposed timeframe, which admittedly is somewhat shorter than the timeframe for the previous mandatory data collection, reflects the time constraints the Martha Wright-Reed Act imposes for “promulgat[ing] any regulations necessary to implement” the Act.

56. Providers instead propose requiring responses to the data collection 120 days following release of this Order. ViaPath asserts that “[p]roviders need a reasonable amount of time to complete the report” and Securus comments that “90 days is an insufficient period of time” to respond to the data collection. ViaPath contends that “a slight extension of the MDC filing deadline is reasonable.” WCB and OEA agree with ViaPath and establish October 31, 2023 as the date on which provider responses will be due, unless final PRA authority for this collection is not granted prior to then. Given the date of release of this Order, this represents an extension of an additional week from the originally proposed 90-day deadline, which, while not as extensive as sought, will nonetheless allow providers additional time to prepare their submissions. WCB and OEA find that granting this extension will still provide the Commission with sufficient time to promulgate regulations to implement the Martha Wright-Reed Act consistent with the Act’s time constraints.

E. Digital Equity and Inclusion

57. As part of the Commission’s continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, WCB and OEA invited comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues associated with the data collection. Specifically, WCB and OEA

sought comment on how their proposals for that collection may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

58. WCB and OEA conclude that the Mandatory Data Collection adopted here will promote digital equity, particularly for incarcerated people and their families. 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 inequitable financial burdens unreasonable rates impose on incarcerated people and their loved ones, while ensuring that providers are fairly compensated for their services. The information IPCS providers submit in their data collection responses will help the Commission advance these goals in accordance with the Communications Act and the Martha Wright-Reed Act.

III. Procedural Matters

59. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, WCB and OEA have prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Order* on small entities. The Supplemental FRFA supplements the Final Regulatory Flexibility Analyses completed by the Commission in the *Rates for Interstate Inmate Calling Services* proceeding and is set forth in Appendix B.

60. *Final Paperwork Reduction Act Analysis.* The Order contains 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 will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, WCB and OEA note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198; see 44 U.S.C. 3506(c)(4), WCB and OEA previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. WCB and OEA have

assessed the effects of the data collection on small business concerns, including those having fewer than 25 employees, and find that to the extent such entities are subject to the collection, any further reduction in the burden of the collection would be inconsistent with the objectives behind the collection.

61. Congressional Review Act. The Commission will not send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), see 5 U.S.C. 801(a)(1)(A), because it does not adopt any rule as defined in the CRA, 5 U.S.C. 804(3).

IV. Ordering Clauses

62. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i)–(j), 155(c), 201(b), 218, 220, 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, 255, 276, 403, and 617, and the authority delegated in sections 0.21, 0.91, 0.201(d), 0.271, and 0.291 of the Commission's rules, 47 CFR 0.21, 0.91, 0.201(d), 0.271, 0.291 and paragraphs 84 and 85 of the *2023 IPCS Order*, this Order *is adopted*.

63. *It is further ordered* that the Commission's Office of the Secretary, Reference Information Center, *shall send* a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Supplemental Final Regulatory Flexibility Analysis

64. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the 2023 Mandatory Data Collection *Public Notice*, released in April 2023. The Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) sought written public comment on proposals in the *Public Notice*, including comment on the Supplemental IRFA. No comments were filed addressing the Supplemental IRFA. The *Public Notice* sought comment on proposals to implement the 2023 Mandatory Data Collection in the Commission's Incarcerated People's Communications Services (IPCS) proceeding and supplements the Final Regulatory Flexibility Analyses completed by the Commission in the *Rates for Interstate Inmate Calling Services* and other Commission orders pursuant to which this data collection will be conducted. This present

Supplemental FRFA conforms to the RFA.

F. Need for, and Objectives of, the Order

1. In the Order, WCB and OEA adopt policies and specific requirements to implement the forthcoming 2023 Mandatory Data Collection for IPCS. In the *2023 IPCS Order*, the Commission adopted a new data collection requirement. 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 of 1934, as amended (the Communications Act). Likewise, it directed WCB and OEA “to update and restructure the most recent data collection as appropriate to implement the Martha Wright-Reed Act.”

2. The Order determines the overall scope of the data collection including: limiting the data collection reporting period to calendar year 2022; defining cost reporting and cost allocation methodologies; defining reporting categories; requiring providers to allocate safety and security measures among seven categories; requiring that providers submit additional information for video IPCS; and adding questions concerning company-wide and facility-level site commissions. The Order also clarifies specific instructions for data collection to provide clarity for the providers completing the forms. Finally, the Order establishes that providers must submit responses by October 31, 2023. Pursuant to their delegated authority, WCB and OEA have prepared instructions, reporting templates, and a certification form for the 2023 Mandatory Data Collection and are issuing this Order to adopt all aspects of these documents.

G. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. There were no comments filed that specifically addressed the proposed rules and policies presented in the Supplemental IRFA.

H. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any

change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the rules and policies proposed in the Supplemental IRFA.

I. Description and Estimate of the Number of Small Entities to Which the 2023 Mandatory Data Collection Will Apply

5. 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 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.

6. 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 Order, for the Supplemental FRFA, we incorporate by reference from these previous Regulatory Flexibility Analyses the descriptions and estimates of the number of small entities that may be impacted by the *Order*.

J. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

7. The 2023 Mandatory Data Collection will impose new or modified reporting, recordkeeping and other compliance obligations on small entities. The Order requires IPCS providers to submit data and other information on, among other matters, 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. WCB and OEA estimate that approximately 30 IPCS providers will be subject to this one-time reporting requirement. In the aggregate, WCB and OEA estimate that responses will take approximately 7,950 hours and cost approximately \$493,224.

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

8. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.”

9. The 2023 Mandatory Data Collection is a one-time collection and does not impose a recurring obligation on providers. Because the Commission’s 2023 *IPCS Order* requires all *IPCS* providers to comply with the 2023 Mandatory Data Collection, the collection will affect smaller as well as larger *IPCS* providers. WCB and OEA have taken steps to ensure that the data collection template is competitively neutral and not unduly burdensome for any set of providers and have considered the economic impact on small entities in finalizing the instructions and the template for the 2023 Mandatory Data Collection. For example, the 2023 Mandatory Data Collection requires the collection of data for a single calendar year instead of three calendar years, as in previous data collection. In response to the comments, WCB and OEA have refined certain aspects of the data collection, including modifying the treatment of audio *IPCS* and safety and security measures, clarifying the reporting of costs related to site commissions, and revising certain proposed definitions. WCB and OEA have also revised instructions for cost reporting and cost allocation that will help the Commission understand the nature of the reported costs, without imposing significant additional burdens on providers. WCB and OEA reorganized instructions for our proposed seven-category framework for reporting safety and security measure costs to simplify them and increase clarity. Further, the instructions for the data collection include relevant diagrams to facilitate providers’ responses and improve the accuracy and consistency of the data they report. The instructions allow, but do not require, providers to subdivide their audio and video *IPCS* costs into more discrete categories based on the type of audio or video service being provided, as some parties suggest, to give providers greater flexibility in reporting these costs.

10. WCB and OEA considered but rejected alternative proposals to allow

providers to use their own allocation methodologies because of the undue burden it would have on the interested parties and the Commission to analyze and correct inconsistent responses. The modifications adopted in the Order avoid unduly burdening small and other responding providers while ensuring that providers have sufficiently detailed and specific instructions to respond to the data collection. The data collection also makes certain questions optional to reduce reporting burdens, including the questions regarding correctional facility-specific total admissions, total releases, and weekly turnover rates.

L. Report to Congress

11. The Commission will send a copy of the Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order, and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

Federal Communications Commission.

Jodie May,

Chief, Competition Policy Division, Wireline Competition Bureau.

Note: The following appendix, 2023 Mandatory Data Collection Instructions and Template, will not appear in the Code of Federal Regulations.

[FR Doc. 2023–16305 Filed 8–1–23; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–78; RM–11946; DA 23–618; FR ID 157371]

Television Broadcasting Services Elko, Nevada

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission’s Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking (NPRM)* in response to a petition for rulemaking filed by Reno Licensee, LLC (Petitioner), the licensee of KENV–TV (Station or KENV–TV), channel 10, Elko, Nevada, requesting the substitution of channel 20 for channel 10 at Elko in the Table of TV

Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 20 for channel 10 at Elko.

DATES: Effective August 3, 2023.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or Joyce.Bernstein@fcc.gov.

SUPPLEMENTARY INFORMATION: The proposed rule was published at 88 FR 16250 on March 16, 2023. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 20. No other comments were filed.

The Bureau believes the public interest would be served by substituting channel 20 for channel 10 at Elko, Nevada. The Commission has recognized that VHF poses challenges for stations providing digital television service on those channels due to propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and result in large variability in the performance of indoor antennas available to viewers, with most antennas performing very poorly on high VHF channels. According to the Petitioner, the Station “has received numerous complaints from local viewers who can receive signals from other local stations but are unable to receive the Station’s over-the-air signal on Channel 10.” Thus, the Petitioner asserts that its channel substitution proposal will serve the public by resolving the over-the-air reception problems and enhancing viewer reception in the Station’s service area. An analysis conducted using the Commission’s *TVStudy* software tool indicates that no persons within the Station’s current noise limited contour will lose service and an additional 1,367 persons are predicted to gain service from the Station.

This is a synopsis of the Commission’s *Report and Order*, MB Docket No. 23–78; RM–11946; DA 23–618, adopted July 19, 2023, and released July 19, 2023. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden