Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375
Commission Announces Inmate Calling Services	)	DA 14-829
Mandatory Data Due Date	)	
	)	

MOTION FOR EXTENSION OF TIME TO RESPOND TO
ONE-TIME MANDATORY DATA COLLECTION

Pursuant to 47 C.F.R. § 1.46, Inmate Calling Solutions, LLC ("ICSolutions") respectfully requests an extension of time to respond to the one-time mandatory data collection requirement adopted by the Federal Communications Commission ("Commission" or "FCC") in the *ICS Order and FNPRM*[1], which currently is due July 17, 2014. Specifically, ICSolutions requests a sixty-day (60) extension or until September 15, 2014 to respond to the data collection. In support of this Motion, ICSolutions states:

1. The data collection requires ICS providers to characterize their correctional facility customers by type (prison or jail), by contract size (based on average daily population) and to identify and explain their direct and common costs by five (5) separate categories: (1) telecommunications and interconnection costs; (2) equipment investment; (3) security costs for monitoring and call blocking; (4) costs of providing ICS that are ancillary to the provision of ICS; and (5) other relevant cost data. Where indicated, this data must be segregated by jurisdiction (local, intrastate intraLATA, intrastate interLATA, interstate, and international) and the information must be provided separately for debit calls, prepaid calls, collect calls, and "other" inmate calling services.

2. ICS providers also must include commissions paid, revenue-producing minutes of use,

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[1] *Rates for Interstate Inmate Calling Services, 28 FCC 14107 (2013) ("ICS Order and FNPRM"), on appeal in Securus v. FCC, Nos. 13-1280, 13-1281, 13-1291, 13-1300 (D.C. Cir.).*

non-revenue producing minutes of use, number of revenue-producing calls, number of nonrevenue producing calls, and average duration of calls. Each of these categories must be provided for each type of correctional facility and by contract size and further broken down by jurisdiction. This information also must be provided separately for debit calls, prepaid calls, collect calls, and "other" inmate calling services.

3. In addition, ICS providers must provide information on the fees they charge to ICS end users, including a description of the fee, the locations where it is applied (by state), the types of facilities in which it applies (prisons, jails, or both), the types of calls to which it applies (by jurisdiction), the numbers of use of each of the fees, and the direct and common costs associated with the ancillary service to which the fee applies.

4. All of the requested information must be supplied for calendar year 2012 and calendar year 2013, along with projections or forecasts, supported by evidence, for calendar year 2014.

5. Finally, all of the above reported data must be accompanied by a narrative referred to as the "Description and Justification" or "D&J" that "fully" explains the: formulas, allocation of common costs, differences, and identity of costs.

6. The Commission may grant an extension of time for good cause shown. Generally, the Commission's criteria for granting such requests are that the extension be in the public interest, cause no harm to any party in the proceeding, and cause no significant delay. Such is the case here.

7. An extension of time may also be appropriate where it is shown that the matter is unusually complex and that additional time is necessary to provide the Commission with an adequate pleading.[2] Since ICSolutions' accounting processes do not currently accommodate the data being sought, the matter is extremely complex.

8. In addition, the Commission may waive a rule where particular facts make strict compliance inconsistent with the public interest, or based on considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.

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[2] *47 C.F.R. Section 146.*

9. ICSolutions submits that good cause exists for grant of the requested extension of time and waiver of the July 17, 2014, deadline for submission of the one-time mandatory data collection.

10. ICSolutions replaced its accounting system and related processes in 2013, right in the middle of the period for which the data request applies. Neither its prior systems and processes nor the ones deployed today provide the data breakdowns being sought by the Commission. Therefore, compliance with this request will necessitate ICSolutions gathering, organizing, translating and reconciling detailed information across two different accounting systems.

11. ICSolutions will not be able to create, extrapolate, compile, and analyze the detailed data and submit it in the format required, including the D&J to meet the Commission's specifications with respect to all of the requested information by July 17, 2014. The Commission consistently has granted extensions of time when the extension would result in the most complete and well-developed record possible or will allow for more accurate responses. Grant of the requested extension would fulfill both of these important public interests.

12. The Commission-required spreadsheet and detailed instructions for the data collection were announced via public notice on June 17, 2014. ICSolutions had no reason to begin to create, extrapolate, compile, or to incur the cost to engage or allocate the resources to assist in such a task until the scope of the collection was both approved and defined. Thus, once the data collection was approved and its detailed scope officially defined, ICSolutions was able to begin identification and assessment of the scope of work required to create, extrapolate, and compile the required data. ICSolutions has now determined that additional time is needed to analyze the information once assembled and to prepare the required accompanying D&J.

13. Requiring ICSolutions to submit the requested data within a 30-day period will not result in accurate or complete information. ICSolutions does not routinely maintain the data requested by the Commission, and does not keep its books and records in the format of the Commission's template spreadsheet. For example, the Commission's data collection requires ICS providers to submit specific

categories of cost data for each type of ICS product they offer based on contract size. ICSolutions does not maintain this type of cost data in the ordinary course of business, and certainly not on a "contract size" basis as requested by the Commission. ICSolutions therefore requires additional time to provide the requested information.

14. As a non-dominant carrier, ICSolutions never has been required to provide cost justification to support its rates or its ancillary fees, and the Commission has long disfavored such approach to rate regulation as discussed further below. While other ICS providers may maintain cost information in a manner readily-adaptable to the mandatory data collection, ICSolutions has had no reason to do so and does not.

15. The data collection imposes new, substantial, complex, and time-consuming recordkeeping and reporting requirements on ICS providers, which ICSolutions has not been required to track, maintain, or report. ICSolutions has no reasonable alternative to providing the data requested by the Commission. Additional time is necessary to permit ICSolutions to create, extrapolate, compile, analyze, describe, and justify the requested data in the Commission-required, detailed format.

16. In addition, the data collection requires information to be reported based on certain categories. ICSolutions' internal books and records do not categorize its correctional facility customers by inmate population or by the type of facility (prison or jail). These are classifications adopted by the Commission. Even the Commission determined it cannot "distinguish . . . between prisons and jails, in part because [the] record does not permit [it] to draw any clear distinctions. . . . [and] there is no need at this time to draw any distinction."[3] Thus, as a threshold matter, ICSolutions must review each of its correctional facility customers based on this newly created categorization and classify them before it determines the associated detailed costs using the Commission-required framework.

17. ICSolutions serves approximately 275 correctional facilities across the United States. While the data collection does not specifically ask for data by correctional facility, in effect that is what is

[3] *ICS Order and FNPRM Par. 17.*

necessary.. Numerous parties have demonstrated that the costs associated with the provision of ICS vary by correctional facility. In light of this, ICSolutions must review each correctional facility to determine the appropriate category (jail or prison) and the average daily population (contract size), and then create, extrapolate, and compile the cost data for that correctional facility, populate the spreadsheet, and analyze the spreadsheet information in a detailed D&J. In addition, ICSolutions will be required to review and analyze its ancillary fees (and the costs associated with those fees) applying the same level of detail by facility type, by service, by service jurisdiction, and on a state-by-state basis. ICSolutions' operation over the data selection period spans 36 different states.

18. ICSolutions has approximately 75 employees spread across the United States and is a "small business" by definition of both the Small Business Administration ("SBA") and the Commission. Each one of ICSolutions' employees has specific responsibilities and obligations related to the provision of ICS. ICSolutions does not have spare personnel that can be devoted to responding to the data request, without significantly disrupting its day-today business operations through the redirection of its limited business resources. Staffing issues are further compounded by absences due to preplanned summer vacations, the Fourth of July holiday, and by other competing state and federal proceedings planned and/or set long before the June 17 notice of this Data Request's due date.

19. As a result, ICSolutions would have to hire and train temporary staff to assist with the administrative, technical, and financial support necessary to analyze the data, populate the spreadsheet, and draft the accompanying D&J for the data. This simply cannot be accomplished in such a short time allotment. Alternatively, grant of the requested extension will allow ICSolutions' existing personnel to balance the demands of the data collection with their daily responsibilities of running the business.

20. The public interest will not be harmed by the requested extension. Consumers have had the benefit of the Commission's interim interstate rate caps since February 11, 2014, when virtually all ICS providers implemented the rate caps. Moreover, the Commission has indicated its intention to seek additional comment in this proceeding before taking further action.

21. In addition, the Commission's stated purpose for the data collection currently does not exist in light of the D.C. Circuit's stay of the requirement that interstate ICS rates be cost-based. The cost data being collected by the Commission is unlikely to have any utilitarian value to the Commission if it intends to pursue a permanent rate cap regime for ICS calling. The Commission's own precedent demonstrates that no individual company cost data is necessary to establish a rate cap regime for interstate ICS rates.

22. In addition, the Commission has previously determined that its then existing policy requiring non-dominant carriers to support their proposed rates with extensive cost and other economic data was no longer necessary because the cost of developing this information is relatively high for a non-dominant carrier and, therefore, the rates paid by its ultimate users are likely need to be higher than if all competitive carriers were free from this unnecessary regulatory burden. The cost justification requirement serves no useful purpose commensurate with the costs of compliance and nullifies many consumer benefits that competition would otherwise produce.

23. The Commission also previously abandoned the use of rate-of-return regulation to set carrier rates because it produces high administrative costs, fosters cross subsidization, creates incentives for misallocation of costs, and supplies insufficient incentives to encourage innovation. Moreover, administering rate-of-return regulation is a difficult and complex process, even when done correctly and well. Given the current departure from established Commission precedent, grant of the requested extension would at least serve to lessen the hardship and expense of trying to achieve an otherwise unrealistic goal and would improve the quality of any data collected. Thus, the public interest, under Commission rules would be served by the granting of ICSolutions' extension request.

24. Finally, the extension requested herein will not cause undue delay to the Commission's consideration of permanent interstate ICS rate reform. Grant of the extension will permit a primary competitor in the ICS marketplace to provide the information desired in the format required, which will facilitate a more complete record for use in a proceeding that is ongoing and for which a further request for comment is expected. The requested extension therefore will cause no harm to any party in the

proceeding and will not be the cause of significant delay to any further action the Commission may take with respect to interstate ICS rates.

CONCLUSION

Accordingly, and for the foregoing reasons, ICSolutions respectfully requests that the Commission extend the deadline for responding to the one-time mandatory data collection by sixty (60) days, or until September 15, 2014. As demonstrated herein, good cause exists for grant of this extension and the public interest would be served by providing ICSolutions with the time necessary to create, extrapolate, compile, analyze, describe, and justify the data requested by the Commission.

Respectfully submitted,

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Dated: July 7, 2014