

**Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554**

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

**TELMATE, LLC MOTION FOR EXTENSION OF TIME TO RESPOND
TO ONE-TIME MANDATORY DATA COLLECTION**

Pursuant to 47 C.F.R. § 1.46,¹ Telmate, LLC (“Telmate”) hereby respectfully requests a ninety (90) day extension of time, to October 15, 2014, to respond to the one-time mandatory data collection currently due July 17, 2014.²

INTRODUCTION

Telmate is a relatively new ICS provider that began as a technology company and, in the normal course of its business, has never maintained cost data in a form that could easily satisfy the Commission’s instant request. Nor does Telmate employ accounting personnel sufficient to or capable of allocating the company’s general cost data to this degree of specificity. Indeed, Telmate’s San Francisco headquarters currently has only about 80 employees, including only a handful or so who reasonably might be categorized as back-office. Of those, all are fully deployed and, in any event, none could perform this task alone. Telmate’s executives are working to satisfy the request, including by adding additional resources (personnel) to compile,

¹ Telmate has notified Commission staff that this extension request is being filed.

² Although other ICS providers have requested sixty (60) day extensions, at least one has conceded that even a sixty (60) day extension likely will be insufficient. Telmate lacks the resources of larger providers, and in light of its need to hire additional employees, it believes that ninety (90) days is a more candid request.

prepare, and vet the data requested; but, the company needs more time to gather the information, create meaningful cost figures, and develop the explanatory descriptions and justifications. Telmate therefore respectfully requests more time to comply with the one-time mandatory data request.

BACKGROUND

In its *ICS Order*,³ the Commission adopted a one-time mandatory data collection (“Data Collection”) to “enable the Commission to take further action to reform rates” and to “ensure that rates, charges and ancillary charges are cost-based.”⁴ This Data Collection was to become effective after approval by the Office of Management and Budget (“OMB”).⁵

On January 13, 2014, the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) stayed implementation of the majority of the rules adopted in the *ICS Order*,⁶ including the requirements that (1) providers charge only cost-based rates and fees for interstate ICS service, and (2) ICS providers annually report and certify information like that now requested in the Data Collection.⁷

³ *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) (“*ICS Order*”), on appeal in *Securus Technologies, Inc. v. FCC*, Nos. 13-1280, 13-281, 13-1291, 13-1300 (D.C. Cir.).

⁴ *ICS Order* ¶ 124.

⁵ *Id.*

⁶ Order, *Securus Techs., Inc. v. FCC*, Nos. 13-1280, 13-1281, 13-1291, 13-1300 (D.C. Cir. Jan. 13, 2014) (“*Stay Order*”).

⁷ See *id.* and *ICS Order* at App’x A (47 C.F.R. §§ 64.6010 and 64.6060). Indeed, had it not been stayed by the D.C. Circuit, the annual cost reporting requirement would have required ICS providers to submit nearly identical information. *Id.* (47 C.F.R. § 64.6060) (requiring “by correctional institution; by jurisdictional nature to the extent that there are differences among interstate, intrastate, and local calls; and by the nature of the billing arrangement to the extent there are differences among Collect Calling, Debit Calling, Prepaid Calling, Prepaid Collect Calling, or any other type of billing arrangement: (i) Rates for Inmate Calling Services, reporting separately per minute rates and per-call or per-connection charges; (ii) Ancillary

On January 16, 2014, pursuant to its obligations under the Paperwork Reduction Act (“PRA”), the Commission invited comments on the new information collection requirements, which it said would “enable the Commission to discharge its core responsibility of ensuring just, reasonable and fair rates . . . by ensuring interstate ICS rates are cost-based.”⁸ That notice anticipated that ICS providers would need 70 hours to respond to the Data Collection.

On March 17, 2014, Telmate and other ICS providers responded to the Commission’s January 16, 2014 request for comment.⁹ The ICS providers challenged the reasonableness of both the Data Collection (which, in light of the D.C. Circuit’s stay of cost-based rates, was no longer necessary¹⁰) and the Commission’s estimated time for completing it (which was inadequate under the circumstances¹¹). Telmate noted that, as a company, it “simply does not have the personnel needed to segregate its costs among 240 facilities, 42 jurisdictions, 3 jurisdiction types, six cost categories, three cost accrual methods, two cost types, and a handful

charges; (iii) Minutes of use; (iv) The average duration of calls; (v) The percentage of calls disconnected by the Provider for reasons other than expiration of time; [and] (vi) The number of calls disconnected by the Provider for reasons other than expiration of time”).

⁸ Federal Register Notice, Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested, Vol. 79, No. 11, at 2834-35 (Jan. 16, 2014).

⁹ See, e.g., Comments of Telmate, LLC, WC Docket No. 12-375 (filed Mar. 20, 2014); Comments of Securus Technologies, Inc. Regarding Data Collection (filed Mar. 20, 2014); Paperwork Reduction Act Comments of Global Tel*Link Corporation, WC Docket No. 12-375 (filed Mar. 20, 2014).

¹⁰ See, e.g., Comments of Telmate, LLC, at Part III.A, WC Docket No. 12-375 (filed Mar. 20, 2014) (“The Mandatory Data Collection Has No Practical Utility, and It Is Duplicative of Information That the D.C. Circuit Has Said the FCC May Not Request.”).

¹¹ See, e.g., *id.* at Part III.B (“The Mandatory Data Collection Does Not Seek to Reduce the Burden on the ICS Providers and Is Inconsistent With Existing Reporting and Recordkeeping Practices”).

of others (i.e., for establishing, maintaining, and closing debit and prepaid accounts, for sending paper statements, and for calling wireless phones, as well as rates charged each).”¹²

On April 17, 2014, the Commission revised its PRA analysis, increasing the estimated burden to 90 hours and removing the “cost-based” justification.¹³

On June 17, 2014, the Commission announced that OMB had approved the Data Collection and set the due date for July 17, 2014.¹⁴ At that time, the Commission provided instructions and a template for ICS providers to use in complying with the Data Collection.¹⁵ As explained in those instructions, ICS providers must provide, for each ICS contract, “direct and common costs incurred in providing inmate calling services for debit, prepaid, collect, and any other inmate calling services.”¹⁶ Those costs must be allocated by facility (jail or prison), facility size (by population band), and service type ((1) telecommunications costs and interconnection fees; (2) equipment investment costs; (3) security costs for monitoring and call blocking; (4) costs of providing inmate calling services that are ancillary to the provision of ICS, including any costs that are passed through to consumers as ancillary charges; and (5) other relevant cost data). They also must be allocated by jurisdictional service (“local, state intra-LATA, state inter-LATA, interstate, and international inmate calling services”). The data must show “commissions paid, revenue and non-revenue producing minutes of use, the number of revenue and non-

¹² *Id.* at 15.

¹³ Federal Register Notice, Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Vol. 79, No. 74, at 21757-58 (Apr. 17, 2014).

¹⁴ *Commission Announces Inmate Calling Services Data Due Date*, Public Notice, DA 14-829, WC Docket No. 12-375 (rel. June 17, 2014).

¹⁵ *Id.* The Commission provided a draft of the Instructions for Inmate Calling Services Mandatory Data Collection to OMB in mid-April 2014, but the draft was not finalized or posted to the electronic docket until approved by OMB.

¹⁶ Instructions for Inmate Calling Services Mandatory Data Collection.

revenue producing calls, and average call durations.”¹⁷ Notwithstanding that the ICS Order only sought costs “for the past year,”¹⁸ the instructions request actual data for 2012 and 2013, and forecasted data for 2014.¹⁹ All data must be supported by evidence, and “[a]ll data that requires clarification should be noted and fully explained in an attached Description and Justification.”²⁰

EXTENSION REQUEST

The Commission may grant an extension for good cause shown.²¹ An extension is appropriate where the matter is unusually complex and where additional time is necessary to provide an adequate response.²² In evaluating requests for extension, the Commission generally considers whether the extension is in the public interest, whether it will cause harm to another party to the proceeding, and whether it will cause significant delay.²³ The Commission has granted extensions where the provider must undertake substantial and time consuming efforts to comply and has no reasonable alternative but to do so.²⁴ It has also done so when granting the

¹⁷ *Id.*

¹⁸ *ICS Order* at ¶ 125.

¹⁹ Instructions for Inmate Calling Services Mandatory Data Collection.

²⁰ *Id.*

²¹ *See, e.g., Application of Media General Broadcasting of South Carolina Holdings, Inc. for Renewal of License for Station WBTW (TV), Florence, SC*, 19 FCC Rcd 24744, ¶ 3 (2004); *see also Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

²² *See, e.g., Audio Enterprises, Inc.*, 3 FCC Rcd 5402, ¶2 (1988).

²³ *Id.*

²⁴ *Rural Call Completion*, 29 FCC Rcd 2032, ¶ 5 (2014) (finding good cause for an extension of time where the provider “had ‘no reasonable alternative but to undertake substantial network modification’ in order to comply with the rule”).

extension of time to file would result in “the most complete and well-developed record possible” or allow for more accurate responses.²⁵

Telmate can show good cause for a modest ninety day (90) extension of time to file because the Data Collection is unusually complex, Telmate has but a single burdensome way to comply, and the extension will improve the product and, thus, the record. Telmate is a technology company that, in the normal course of its business, neither maintains the requested data in the form it is being requested nor structured its data systems to easily accommodate this request. Telmate also has few employees with access to this data, and fewer still (no more than three total, including its Chief Executive Officer) capable of making the reasoned judgments needed to analyze and allocate the data as requested. Although Telmate is in the process of hiring employees to help it comply with this Data Collection, it cannot accomplish the task quickly.

The public interest requires access to the best available information, which will not be available absent an extension, and the modest delay will not prejudice or otherwise harm another party to the proceeding.

A. The Data Collection Is Unusually Complex, Especially For A Technology Company Like Telmate That, In The Normal Course, Does Not Maintain This Information In The Form Requested And Cannot Provide An Adequate Response Without Additional Time

A ninety (90) day extension of the Data Collection deadline is appropriate because, at least for a company like Telmate, the Data Collection is unusually complex. Telmate is a non-

²⁵ See, e.g., Order Granting Further Extension of Time to File First Round DTV Channel Election Forms, *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 20 FCC Rcd 1555, ¶ 3 (2005); Order Extending Reply Comment Period, *Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems in the Ku-Band Frequency Range*, 16 FCC Rcd 7070, ¶ 3 (2001).

dominant carrier that began as (and still considers itself) a technology company. Its technological innovations in the ICS marketplace have been instrumental to its success, and until now, it has never been required to provide cost justification to support its proposed rates or its ancillary fees. In part because of its history, Telmate relies on data systems different from those used by other traditional ICS providers. Unlike some of those providers, it cannot currently employ simple data queries to extract data consistent with the FCC instructions. Instead, Telmate must first re-organize and re-configure its data systems to gather useful subsets of raw data, after which time it must analyze and explain that data. Thus, the gathering and analysis needed to translate existing, general cost data into the specific categories requested cannot be achieved quickly.

In fact, having already spent more than 100 total hours trying to comply with this request, and being multiples of that from completion, Telmate can confirm that the Commission's 70- to 90-hour estimates did not apply to Telmate. Moreover, because Telmate has limited personnel with the ability to access its cost data and even fewer with the ability to make educated assumptions about it, those hours must be spread across a very limited number of employees who perform other important and ongoing functions at the company. Accordingly, to accomplish and expedite this process, Telmate has added and is continuing to add more personnel to help it compile, prepare, and vet its response to the Data Collection. But, again, with easy access to only general cost categories, it simply is unable to reliably compile and fully explain the thousands of pieces of information – segregated on a contract basis by year, facility type and size, cost type, service types and jurisdictional service – within the time allotted. Thus, Telmate will need additional time to comply.

B. In This Case, The Extension Is In The Public Interest Because It Is Necessary To Gather Complete Information And Will Not Harm Another Party Or Cause Significant Delay

To the extent Telmate cost data is useful to the Commission and the public,²⁶ it can only be useful if it is reasonably accurate. Presumably, for this reason, the Commission has made clear that all data must be supported by evidence, and “[a]ll data that requires clarification should be noted and fully explained in an attached Description and Justification.”²⁷ Because Telmate needs additional time to gather, analyze and produce reasonably accurate information, providing it additional time to do so must be in the public interest. This is especially true here, where Telmate’s consumers are protected by the interim rate caps applicable to all interstate rates, where the ICS Order is stayed in the D.C. Circuit, and where – in the instant rulemaking – the Commission has stated an interest in continuing to work with all stakeholders to identify and solve problems in the ICS market going forward. Each of these factors militates in favor of accuracy over expedience.

In a similar vein, this requested extension will not cause undue delay to the Commission’s consideration of permanent interstate ICS rate reform. To the contrary, an extension would allow Telmate to provide more accurate information that will help the Commission more expeditiously evaluate and apply the resulting data. Accordingly, neither the public interest nor other parties to this proceeding will be harmed by the requested extension.

²⁶ The D.C. Circuit’s *Stay Order* negated the Commission’s stated reason for requiring the instant Data Collection. *See, e.g.*, Comments of Telmate, LLC, WC Docket No. 12-375 (filed Mar. 20, 2014).

²⁷ *Id.*

CONCLUSION

For the foregoing reasons, Telmate respectfully requests that the Commission grant a ninety (90) day extension of the deadline for responding to the Data Collection, until October 15, 2014.

Dated: July 10, 2014

Respectfully submitted,

Telmate

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