claims process under this IFR (see, 44 CFR part 296) is for the claimant to file a Notice of Loss with the Office of Hermit's Peak/Calf Canyon Fire Claims (''Claims Office''). After receipt and acknowledgement by the Claims Office, a Claims Reviewer will contact the claimant to review the claim and help the claimant formulate a strategy for obtaining any necessary supporting documentation to complete the Proof of Loss. After discussion of the claim with the Claims Reviewer, the claimant will review and sign a Proof of Loss and submit it to the Claims Office. The Claims Reviewer will submit a report to the Authorized Official for review to determine whether compensation is due to the claimant. Once that review is completed, the Authorized Official's written decision will be provided to the claimant. If satisfied with the decision, the claimant will receive payment after returning a completed Release and Certification Form. If the claimant is not satisfied with the decision, they may file an Administrative Appeal with the Director of the Claims Office. If the claimant is not satisfied after appeal, the dispute may be resolved through binding arbitration or heard in the United States District Court for the District of New Mexico.

The IFR also announced that FEMA would hold four in-person public meetings to seek feedback on the procedures for processing and payment of claims to those injured by the Fire sustaining property, business, and/or financial loss. This document announces that FEMA will hold two additional public meetings. FEMA is holding these additional public meetings to ensure that all interested parties have sufficient opportunity to provide comments on the IFR during the comment period. FEMA received a request to provide video conferencing at upcoming public meetings. As these meetings are not held in FEMA facilities, the Agency is unable to offer video conferencing. Transcripts of the meetings will be posted to the public docket and FEMA will also post transcripts of the meetings to *https://www.fema.gov/hermits-peak.* FEMA will carefully consider all relevant comments received during the public meetings and during the IFR comment period closing on January 13, 2023. All comments or remarks provided on the request for information during the meeting will be transcribed and posted to the rulemaking docket on *https://www.regulations.gov.*

Erik A. Hooks,

Deputy Administrator, Federal Emergency Management Agency.

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administer a program for fully compensating those who suffered injuries resulting from the Cerro Grande Fire. The Cerro Grande fire resulted from a prescribed fire ignited on May 4, 2000, by National Park Service fire personnel at the Bandelier National Monument, New Mexico under an approved prescribed fire plan. That fire burned approximately 47,750 acres and destroyed over 200 residential structures. The Cerro Grande Fire Assistance Act process is detailed in an interim final rule (65 FR 52259 (Aug. 27, 2000)) and a final rule (66 FR 15847 (Mar. 21, 2001)) that is now codified at 44 CFR part 295.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375; FCC 22–76; FR ID 113660]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (FCC or Commission) amends its rules to: require inmate calling services providers to provide access to all relay services eligible for Telecommunications Relay Service (TRS) Fund support, as well as American Sign Language (ASL) point-to-point video communication, where broadband internet access service is available, in jurisdictions with an average daily population of 50 or more incarcerated persons; clarify and expand the scope of restrictions on inmate calling services providers assessing charges for TRS and ASL point-to-point video calls; expand the scope of inmate calling services providers' required Annual Reports; and facilitate registration for carceral use of TRS. The Commission also amends its rules to: prohibit inmate calling services providers from seizing or otherwise disposing of funds in inactive calling services accounts until at least 180 calendar days of continuous inactivity has passed; lower the caps on provider charges for single-call services and third-party financial transactions; and clarify the definitions of ''Jail'' and ''Prison.'' These actions will improve communications access for incarcerated people with disabilities and lessen the financial burdens incarcerated people and their loved ones face when using calling services.

DATES:

Effective date: The amendments to the rules are effective January 9, 2023, except for the amendments codified as §§ 64.611(k)(1)(i) through (iii) (amendatory instruction 6), 64.6040(c) (amendatory instruction 11), and 64.6060(a)(5) through (7) (amendatory instruction 12), which are delayed. The Commission will publish a document in the **Federal Register** announcing the effective date for these delayed amendments.

Compliance date: Compliance with § 64.6040(b)(2) of the rules is required by January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Disability Rights Office of the Consumer and Governmental Affairs Bureau, at (202) 418–1264 or via email at *Michael.Scott@fcc.gov,* regarding portions of this document relating to communications services for incarcerated people with hearing or speech disabilities, and Jennifer Best Vickers, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418–1526 or via email at *jennifer.vickers@fcc.gov,* regarding other matters.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Report and Order, document FCC 22–76, adopted September 29, 2022, released September 30, 2022, in WC Docket No. 12–375. The Commission previously sought comment on these issues in *Rates for Interstate Inmate Calling Services,* Fifth Further Notice of Proposed Rulemaking, WC Docket No. 12–375, FCC 21–60, published at 86 FR 40416, July 28, 2021. This summary is based on the public redacted version of document FCC 22–76, the full text of which can be accessed electronically via the FCC's Electronic Document Management System (EDOCS) website at *www.fcc.gov/edocs* or via the FCC's Electronic Comment Filing System (ECFS) website at *www.fcc.gov/ecfs.* 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).

Synopsis

1. The Commission adopts several requirements to improve access to communications services for incarcerated people with communication disabilities. The Commission requires that inmate calling services providers provide 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 (*i.e.,* in

that city, county, state, or the United States) totals 50 or more persons. The Commission also requires that where inmate calling services 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 clarifies and expands the scope of the restrictions on inmate calling services providers assessing charges for TRS calls, expands the scope of the required Annual Reports to reflect the above changes, and modifies TRS user registration requirements to facilitate the use of TRS by eligible incarcerated persons.

2. The Commission also adopts other reforms to lessen the financial burden incarcerated people and their loved ones face when using calling services. To address allegations of abusive provider practices, the Commission prohibits providers from seizing or otherwise disposing of funds in inactive calling services accounts until at least 180 calendar days of continuous inactivity has passed in such accounts, after which providers must refund the balance or treat the funds in accordance with any applicable state law requirements. The Commission lowers its cap on provider charges for individual calls when neither the incarcerated person nor the person being called has an account with the provider, as well as its cap on provider charges for processing credit card, debit card, and other payments to calling services accounts. Finally, the Commission amends the definitions of ''Jail'' and ''Prison'' in its rules to conform the wording of those rules with the Commission's intent in adopting them in 2015.

Background

3. *Communication Disabilities and Calling Services for Incarcerated People.* In 2013, the Commission clarified that section 225 of the Act and the Commission's implementing regulations prohibit inmate calling services providers from assessing an additional charge for a TRS call, in excess of the charge for an equivalent voice inmate calling services call. Rates for Interstate Inmate Calling Services, published at 78 FR 67956, November 13, 2013. In 2015, the Commission went further, amending its rules to prohibit inmate calling services providers from levying or collecting any charge at all for a TRS call placed by an incarcerated individual using a text telephone (TTY) device. Rates for Interstate Inmate Calling Services, published at 80 FR 79135, December 18, 2015 (*2015 ICS Order*). The Commission reasoned that, by exempting TRS calls from the fair compensation mandate of section 276 of the Act, Congress indicated an intent that such calls be provided for no charge.

4. In 2015, the Commission affirmed that the general obligation of common carriers to ensure the availability of ''mandatory'' forms of TRS—TTY-based TRS and speech-to-speech relay service (STS)—applies to inmate calling services providers. However, the Commission did not require those providers to provide access to other relay services—Video Relay Service (VRS), Captioned Telephone Service (CTS), internet Protocol Captioned Telephone Service (IP CTS), and internet Protocol Relay Service (IP Relay). The Commission reasoned that, because it had not required that all common carriers provide access to these services, it was not able to require inmate calling services providers to do so.

5. In 2021, after reviewing the record of this proceeding, and noting that there is far more demand for ''non-mandatory'' relay services, such as VRS and IP CTS, than for ''mandatory'' TTY-based relay service, the Commission found that access to commonly used, widely available relay services, such as VRS and IP CTS, is equally or more important for incarcerated people with communication disabilities than it is for the general population. Therefore, to ensure that such individuals have functionally equivalent access to communications, the Commission proposed to amend its rules to require that inmate calling services providers give access wherever feasible to all relay services eligible for TRS Fund support. The Commission also sought comment on whether changes to its TRS rules would be necessary in conjunction with expanded TRS access for incarcerated people, and proposed to amend § 64.6040 of its rules to clarify that the prohibition on inmate calling services providers charging for TRS calls applies to all forms of TRS, and that such charges must not be assessed on any party to a TRS call for either the relay service itself or the device used. In addition, the Commission sought comment on whether to require inmate calling services providers to give access to direct, or point-to-point, video communication for eligible incarcerated individuals wherever they provide access to VRS, and whether to limit the charges that may be assessed for such point-to-point video service. Finally, the Commission sought comment on whether to extend its reporting requirements from just TTY service to all other forms of TRS.

6. *Rate and Ancillary Services Fee Caps.* Beyond the disability context, in 2021, the Commission took a number of actions that warrant specific attention. Structurally, the Commission applied separate rate caps to prisons, jails having average daily populations of 1,000 or more incarcerated people, and jails with lower average daily populations. Rates for Interstate Inmate Calling Services, published at 86 FR 40682, July 28, 2021 (*2021 ICS Order*). Additionally, the Commission established interim interstate and international rate caps for prisons and for jails having average daily populations of 1,000 or more. Those rate caps are interim because flaws in the data submitted in response to the Second Mandatory Data Collection prevented the Commission from setting permanent caps for interstate and international inmate calling services and associated ancillary services that accurately reflect the costs of providing those services.

7. To account for this problem, the Commission directed the Wireline Competition Bureau (WCB) and Office of Economics and Analytics (OEA) to develop an additional data collection—the Third Mandatory Data Collection—to enable the Commission to set permanent rate caps for interstate and international inmate calling services that accurately reflect the providers' costs of providing those services, and to inform the evaluation and potential revision of the Commission's caps on ancillary service charges. After seeking public comment, WCB and OEA issued an Order, published at 87 FR 16560, March 23, 2022, requiring each inmate calling services provider to submit, among other information, detailed information regarding its inmate calling services operations, costs, revenues, site commission payments, security services, and ancillary services costs and practices. The providers' data collection responses were due June 30, 2022.

8. Looking forward, the Commission sought comment on the methodology the Commission should use to adopt permanent per-minute rate caps for interstate and international inmate calling services, including seeking comment on certain aspects of reported costs, such as on site commission costs and other site commission reforms for facilities of all sizes, and on the costs of providing calling services to jails with average daily populations of fewer than 1,000 incarcerated people.

9. *Ancillary Services Fee Caps and Practices.* The Commission adopted ancillary services charge rules in 2015 which limited permissible ancillary

services charges to only five types and capped the charges for each: (1) Fees for Single Call and Related Services—billing arrangements whereby an incarcerated person's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the inmate calling services provider or does not want to establish an account; (2) Automated Payment Fees—credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response, web, or kiosk; (3) Third-Party Financial Transaction Fees—the exact fees, with no markup, that providers of calling services used by incarcerated people are charged by third parties to transfer money or process financial transactions to facilitate a consumer's ability to make account payments via a third party; (4) Live Agent Fees—fees associated with the optional use of a live operator to complete inmate calling services transactions; and (5) Paper Bill/Statement Fees—fees associated with providing customers of inmate calling services an optional paper billing statement. Building on these rules in the *2021 ICS Order,* the Commission capped, on an interim basis, the third-party fees inmate calling services providers may pass through to consumers for single-call services and third-party financial transactions at $6.95 per transaction. The Commission also sought comment on the relationship between these two ancillary services, and on reducing the caps for single-call services fees and third-party financial transactions fees for automated transactions to $3.00 and the cap for live agent fees to $5.95.

10. *Consumer Disclosures.* In the *2021 ICS Order,* the Commission adopted three new consumer disclosure requirements to promote transparency regarding the total rates charged consumers of inmate calling services. First, the Commission required providers to ''clearly, accurately, and conspicuously disclose'' any separate charge (*i.e.,* any ''rate component'') for terminating international calls to each country where they terminate international calls ''on their websites or in another reasonable manner readily available to consumers.'' Second, the Commission required providers to ''clearly label'' any site commission fees they charged consumers as ''separate line item[s] on [c]onsumer bills'' and set standards for determining when the fees would be considered ''clearly label[ed].'' Finally, the Commission required providers to ''clearly label'' all charges for international calls, as ''separate line item[s] on [c]onsumer bills.''

11. *Other Relevant Topics.* In 2021, the Commission expressed concern about providers' practices regarding unused funds in inactive accounts and invited comment on whether to require refunds after a certain period of inactivity. The Commission proposed to amend the definitions of ''Jail'' and ''Prison'' in its rules by, among other actions, explicitly including facilities of the U.S. Immigration and Customs Enforcement (ICE) and the Federal Bureau of Prisons (BOP), whether operated by the law enforcement agency or pursuant to a contract, in the rules' definition of ''Jail,'' and by adding the terms ''juvenile detention facilities'' and ''secure mental health facilities'' to that definition. The Commission also highlighted record evidence that ''some providers of inmate calling services may have been imposing 'duplicate transaction costs' on the same payments,'' such as charging both an automated payment fee when a consumer makes an automated payment to fund its account, as well as charging a third-party financial transaction fee to cover credit/debit card processing costs on the same transaction. The Commission similarly sought comment on ''whether the credit card processing fees encompassed in the automated payment fee are the same credit card processing fees referred to in the third-party financial transaction fee.''

12. Finally, the Commission sought comment on whether alternative pricing structures (*i.e.,* those that are independent of per-minute usage pricing) would benefit incarcerated people and their families. The Commission asked commenters to address the relative merits of different pricing structures, ''such as one under which an incarcerated person would have a specified—or unlimited—number of monthly minutes of use for a predetermined monthly charge.'' The Commission also asked whether it should allow providers to offer different optional pricing structures ''as long as one of their options would ensure that all consumers of inmate calling services have the ability to choose a plan subject to the Commission's prescribed rate caps.'' Relatedly, the Commission sought comment on whether it should adopt a process for waiving the per-minute rate requirement to allow for the development of alternative pricing structures.

Disability Access Requirements for Calling Services Providers

13. *Making Additional Forms of TRS Available to Incarcerated People.* The Commission amends its rules to require that inmate calling services providers must provide incarcerated, TRS-eligible users the ability to access any relay service eligible for TRS Fund support. The record amply demonstrates that, in the incarceration setting just as in other environments, access to traditional, TTY-based TRS alone is insufficient to ensure the availability of functionally equivalent communication. Access to more technologically advanced forms of TRS—VRS, IP Relay, and IP CTS or CTS—is necessary to ensure that incarcerated people with hearing or speech disabilities have access to services that are functionally equivalent to the telephone service available to incarcerated people without such disabilities. These four forms of TRS are widely available to, and relied upon by, persons with disabilities nationwide. VRS enables individuals who are deaf and use ASL to communicate in their primary language. CTS and IP CTS enable individuals who are hard of hearing and can speak to communicate by telephone with minimal disruption to the natural flow of conversation. IP Relay offers a text-based relay service that is faster than TTY-based TRS and more immune to the technical problems affecting TTY use on IP networks. Collectively, these four forms of TRS, along with TTY-based TRS and STS, are essential for ensuring that all segments of the TRS-eligible population have access to functionally equivalent communication.

14. The Commission revisits its interpretation in the *2015 ICS Order* of the Commission's authority to mandate the provision of VRS, CTS, IP CTS, and IP Relay by inmate calling services providers. The Commission now changes course and rejects that interpretation to the extent it could be read to indicate that the Commission lacks authority to mandate the provision of these services in carceral settings. The absence of a general mandate in the Commission's rules for the provision of VRS, CTS, IP CTS, and IP Relay by carriers and interconnected Voice over internet Protocol (VoIP) service providers does not preclude the Commission from adopting a rule requiring that inmate calling services providers provide access to these relay services in the special context of carceral settings. TRS Fund support for these services has been sufficient to ensure their wide availability to the general public, rendering such a general mandate unnecessary. However, the Commission now finds that the incentives resulting in providers' near-universal provision of these services to

the general public are not present in the special context of inmate calling.

15. As explained in document FCC 21–60, VRS, CTS, IP CTS, and IP Relay are ''non-mandatory'' only in the limited sense that carriers and VoIP service providers do not have an obligation to provide these services themselves, and that Commission-certified state TRS programs are not required to include these services. To ensure their availability to the general public, the Commission requires that all telecommunications carriers and VoIP service providers support the provision of VRS, IP Relay, IP CTS, and CTS through *mandatory* contributions to the TRS Fund. 47 CFR 64.604(c)(5)(iii)(A), (B). As a consequence, VRS, IP Relay, and IP CTS are available to every broadband user at no additional cost. Indeed, people who are deaf or hard of hearing or those with speech disabilities use VRS and IP CTS far more often than they use the ''mandatory'' forms of TRS. In addition, CTS, even though not ''mandatory,'' is currently included in every state TRS program and is thereby available to every telephone service subscriber. And while the near-universal availability of such relay services outside the walls of correctional facilities may make it unnecessary to formally mandate their availability to the general population, the uneven record of access to such services in correctional facilities establishes that a mandate *is* needed to ensure their availability to people who are incarcerated. Although the Commission recognizes that the provision of any communication service to incarcerated people requires the consent of the relevant correctional authority, the Commission requires inmate calling services providers to ensure that these services are made available to incarcerated people in all facilities within the scope of the rule, absent the refusal of such consent by a correctional authority.

16. Further, in requiring inmate calling services providers to provide access to all TRS Fund-supported relay services, the Commission also helps ensure the availability of relay services that enable Federal, state, and local correctional authorities to carry out their parallel obligations under Federal law. Under Title II of the Americans with Disabilities Act (ADA), Public Law 101–336, title II, sec. 202, codified at 42 U.S.C. 12131 *et seq.,* state and local correctional authorities, as well as other government agencies, must provide nondiscriminatory access to their services, programs, and activities, including telephone service. 42 U.S.C. 12132. Federal correctional authorities are subject to similar obligations. *See* 29 U.S.C. 794. Further, U.S. Department of Justice regulations implementing Title II of the ADA provide that state agencies, including correctional authorities, must ''furnish appropriate auxiliary aids and services where necessary to afford [incarcerated individuals with disabilities] an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity,'' and such ''auxiliary aids and services'' are defined to include, among other things, ''[q]ualified interpreters on-site or through video remote interpreting (VRI) services,'' and ''voice, text, and video-based telecommunications products and systems, including [TTYs], videophones, and captioned telephones, or equally effective telecommunications devices.'' 28 CFR 35.104. The Justice Department has entered numerous settlement agreements to enforce these requirements in the incarceration context, and in recent years many of these agreements specifically provide for access to advanced communications products such as captioned telephones and videophones, as well as services such as VRS.

17. As noted above, the Commission does not require inmate calling services providers to provide access to any form of TRS for which the correctional authority withholds consent. The Commission understands that under Title II of the ADA and the Department of Justice's implementing regulations, generally speaking, a correctional authority would need to have a strong justification—presumably based on evidence of ''undue financial and administrative burdens''—for withholding consent to an inmate calling services provider's provision of access to the most effective forms of TRS. The burden is on the correctional authority to establish undue burden, and the authority must still ''take any other action that would not result in . . . such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the [correctional authority].'' 28 CFR 35.164.

18. Some commenters suggest that responsibility for making TRS available should lie exclusively with correctional authorities and certified TRS providers. However, the record shows that active inmate calling services involvement can be critical to ensuring that advanced forms of TRS actually *are* made available in a facility. The Commission concludes that the imposition of this service obligation on inmate calling services providers is necessary to ensure that relay services are available in the incarceration setting ''to the extent possible and in the most efficient manner.'' The Commission does not, however, preclude an inmate calling services provider from satisfying its TRS access obligations by delegating the performance of some of those responsibilities to the correctional authority, provided that the end result of such delegation complies with the Commission's rules.

19. The record also shows that, due to recent changes in correctional visitation practices, it is now feasible for inmate calling services providers to make VRS and other advanced forms of TRS available, without undue cost or security risk, in any correctional facility with a substantial population. Indeed, as a number of commenters point out, inmate calling services and TRS providers are already partnering to provide access to internet-based forms of TRS in hundreds of facilities. Further, it appears that the availability at correctional facilities of the broadband connections needed for internet-based TRS has increased dramatically since the onset of the COVID–19 pandemic, due to the ''exponentially'' growing demand for video visitation services, which also require a broadband connection. According to a commenter, ''[t]he only jails not requiring video visitation are the small city and county facilities, generally with a population below 50 average daily population (ADP).'' As for user devices, in contrast to the situation ten years ago, when this proceeding commenced, ''now almost all [inmate calling services] bids include the provision of tablets to permit incarcerated persons to access [inmate calling services] within their cells.''

20. In general, internet-based TRS can be accessed from such tablets through downloadable software applications available from TRS providers. A commenter questions the accuracy of this statement in the incarceration context, noting that ''correctional institutions require [inmate calling services] providers to block third-party apps from being accessible by inmates on tablets provided to inmates'' and that unsecured messaging capabilities ''would allow the incarcerated to contact and harass victims, witnesses, minors, and judges.'' The Commission recognizes that TRS software applications used by the general public may require modification for use in correctional facilities. However, as discussed in the text, the current use of internet-based TRS in hundreds of correctional facilities indicates that TRS providers are able to offer modified

software that meets the security needs of correctional authorities.

21. Providing access to internet-based TRS that meets the security needs of correctional facilities may pose some technical challenges, but the record indicates that by working together, inmate calling services and TRS providers have been able to overcome such challenges. For example, a VRS provider states that, due to the call recording and monitoring capabilities that inmate calling services providers already have in place, it ''has not had any security problems providing VRS to incarcerated people.''

22. Therefore, the Commission requires that inmate calling services providers take all steps necessary to ensure that access to an appropriate relay service is made available promptly to each inmate who has a communication disability. In particular, inmate calling services providers must:

- Make all necessary contractual and technical arrangements to ensure that, consistent with the security needs of a correctional facility, incarcerated individuals eligible to use TRS can access at least one certified provider of each form of TRS.
- Work with correctional authorities, equipment vendors, and TRS providers to ensure that screen-equipped communications devices such as tablets, smartphones, or videophones are available to incarcerated people who need to use TRS; and that all necessary TRS provider software applications are included, with any adjustments needed to meet the security needs of the institution, provide compatibility with institutional communication systems, and allow operability over the inmate calling services provider's network.
- Provide assistance as needed by TRS providers in collecting the required registration information and documentation from users and from the correctional facility. Further, when an incarcerated person who has individually registered to use VRS, IP Relay, or IP CTS is released from incarceration or transferred to another correctional authority, the inmate calling services provider shall notify the TRS provider(s) with which the incarcerated person is registered.

23. The Commission notes that the rule adopted does not require the inmate calling services provider to make determinations of eligibility. The Commission also notes that it permits, but does not require, that inmate calling services providers establish connections with more than one VRS or IP CTS provider. The Commission expects that the registration information and documentation that TRS providers need to collect will be readily available from inmate calling services providers and correctional authorities. In those instances where some additional effort might be necessary to collect such information and documentation, inmate calling services providers—which have contractual relationships with correctional authorities and billing relationships with incarcerated persons—are well situated to provide such assistance. Therefore, the Commission declines a commenter's invitation to ''clarify that [inmate calling services] providers need not collect information that they do not reasonably collect in the normal course of business.''

24. *Scope of the TRS Access Requirement.* The Commission initially applies this requirement to inmate calling services providers serving any facility where broadband internet access service is available, if the average daily population of all facilities in the governing jurisdiction totals 50 or more incarcerated persons.

25. Broadband internet access service is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. 47 CFR 8.1(b). Congress has recently acted to make broadband more widely available. *See* 47 U.S.C. ch. 16; 47 CFR 54.1900 through 54.1904. Because the bandwidth required for various forms of TRS can change as technology develops, the rule does not specify a minimum speed or bandwidth for broadband service. To the extent an inmate calling services provider is uncertain about whether the internet access service can support all forms of TRS, the inmate calling services provider should obtain documentary support from a certified TRS provider as to whether the available speed or bandwidth is sufficient to support each form of internet-based TRS.

26. By ''jurisdiction,'' the Commission means the state, city, county, or territory operating or contracting for the operation of a correctional facility (or for Federal correctional facilities, the United States). The rule applies, for example, to a state correctional facility with an average daily population of fewer than 50 incarcerated persons, where broadband service is available, if the total average daily population for all facilities in the state is 50 or more incarcerated persons. As noted above, the current record indicates that in such facilities, the broadband connections and video-capable devices needed for, *e.g.,* VRS access are already being routinely provided for inmate use as part of video visitation systems. In such facilities, where broadband is *not* available, the Commission does not require an inmate calling services provider to provide access to the three internet-based forms of TRS—VRS, IP CTS, and IP Relay—but does require that inmate calling services providers provide access to non-internet Protocol CTS, as well as TTY-based TRS and STS, as broadband service is not needed for these forms of TRS. Conversely, where broadband service is available and the provision of IP CTS access is required by the Commission's rules and provided by the inmate calling services provider in the facility, the Commission does not require inmate calling services providers to provide access to non-internet Protocol CTS in that facility. To consolidate the rule provisions addressing the specific TRS access obligations of inmate calling services providers, the Commission amends § 64.6040 of its rules to incorporate the existing obligation to provide access to TTY-based TRS and STS. Because this change merely codifies an existing obligation, additional comment is unnecessary, and the Commission has good cause to forgo seeking such comment under 5 U.S.C. 553(b).

27. In recent *ex parte* communications, some inmate calling services providers assert that even in jurisdictions with average daily populations of 50 or more incarcerated persons, providing VRS access may be burdensome in some instances. According to one provider, many short-term facilities with average daily populations of 50 or more, such as city jails and holding facilities, do not offer video visitation systems. Assuming there are such facilities, the record does not justify a finding indicating that the cost of providing video-capable devices and appropriate security are so substantial as to make it infeasible or unreasonable to require the provision of essential communication capabilities for incarcerated people with communication disabilities. As noted above, access to VRS and other internet-based forms of TRS is currently available in hundreds of correctional facilities. The Commission notes that parties claiming that substantial costs would be imposed on providers serving jurisdictions with average daily populations of 50 or more incarcerated persons have provided no specific evidence of such costs. Again, the Commission does not require inmate calling services providers to provide

access to any form of TRS for which the correctional authority refuses consent, and ADA regulations do not require correctional authorities to take action that they can demonstrate would result in undue financial and administrative burdens. The Commission also notes that providers may supplement their responses to the Third Mandatory Data Collection to separately document, on an annualized basis, any increased costs they will incur in implementing document FCC 22–76's requirements relating to disability access.

28. The Commission defers a decision on the application of this requirement in those jurisdictions where the average daily population of incarcerated persons is less than 50, to allow further consideration of the costs and benefits of expanded TRS access in such facilities, based on a more fulsome record. Two commenters have raised concerns that a broadened TRS access requirement could impose substantial costs on small rural jails. Although the current record contains little quantitative evidence regarding the extent of this alleged burden, the Commission believes it is appropriate to seek further comment before determining whether to extend the TRS access rule to this relatively small subset of the incarcerated population. While there are 1,100 *jurisdictions* with jail populations below 50, the average daily population of these jurisdictions comprises only 3.6% of the total population of jails. And because there are approximately twice as many people incarcerated in state or Federal prisons as in city or county jails, the jail population in these 1,100 jurisdictions represents only 1.2% of all incarcerated people. The Commission stresses that every correctional system to which the rule applies is covered as to all facilities in the system, regardless of the population of inmates in any particular facility within that jurisdiction. The Commission does not find record support for the argument that correctional authorities would transfer incarcerated people with disabilities across jurisdictional lines, to rural county jails not subject to the rule, in an effort to avoid their TRS access obligations.

29. However, the Commission stresses that the TRS-related access obligations of correctional authorities under Title II of the ADA (and analogous laws governing Federal authorities) are not subject to any population size limitation. Accordingly, to ensure that TRS and point-to-point video calling are available to incarcerated persons to the fullest extent possible, the Commission believes the TRS-related access requirements of inmate calling services providers should be at least coextensive with those of correctional authorities. Therefore, in the Sixth Further Notice of Proposed Rulemaking (*Sixth FNPRM*), WC Docket No. 12–375, FCC 22–76, FR ID 111465, published at 87 FR 68416, November 15, 2022, the Commission seeks further comment on extending the obligation to provide access to additional forms of TRS and point-to-point video calling, to include jurisdictions with an average daily population of fewer than 50 incarcerated persons. The Commission also notes that the current rule remains universally applicable; therefore, an inmate calling services provider must ensure that access to the ''mandatory'' forms of TRS, traditional TRS and STS, is universally available, including in jurisdictions with average daily populations below 50.

30. *Legal Authority.* The Commission finds that it has legal authority to adopt this rule. Section 225(b) of the Act directs the Commission to ''ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to [individuals with communication disabilities] in the United States,'' 47 U.S.C. 225(b)(1), and no party contends that incarcerated people are excluded from this mandate. In addition, section 225(c) of the Act requires that each carrier provide TRS in compliance with the Commission's regulations ''throughout the area in which it offers service.'' A carrier may satisfy its obligation by providing TRS ''individually, through designees, through a competitively selected vendor, or in concert with other carriers.'' 47 U.S.C. 225(c).

31. To the extent that the *2015 ICS Order* could be read to indicate that the Commission lacked authority to mandate the provision of VRS, IP Relay, CTS, and IP CTS in a carceral setting in the absence of a general mandate, the Commission changes course from such interpretation. The Commission has long held that these services are TRS, and as noted above, section 225(c) of the Act requires common carriers to offer TRS in compliance with the Commission's TRS regulations. The Commission therefore finds that it has authority to adopt rules requiring that access to these services be provided by inmate calling services providers, notwithstanding the Commission's prior discretionary determinations not to mandate the provision of such services by carriers serving the general population.

32. The Commission also finds that inmate calling services providers that are classified as providers of interconnected VoIP service are subject to these requirements pursuant to the Commission's Title I ancillary jurisdiction. Ancillary jurisdiction may be employed, in the Commission's discretion, where Title I of the Act gives the agency subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is reasonably ancillary to the effective performance of its various responsibilities. More specifically, as the Commission has previously held, Title I of the Act gives the Commission subject matter jurisdiction over ''all interstate and foreign commerce in communication by wire or radio'' and ''all persons engaged within the United States in such communication,'' 47 U.S.C. 152(a), and interconnected VoIP services are covered by the statutory definitions of ''wire'' and ''radio.'' In 2007, the Commission also held that imposing the statutory TRS obligations of common carriers on interconnected VoIP service providers is reasonably ancillary to the Commission's responsibility to ensure the availability of TRS under section 225(b)(1) of the Act and would give full effect to the purposes underlying section 225(b)(1), as enumerated in that section. For the same reasons, asserting ancillary jurisdiction to impose TRS obligations on ICS providers is likewise reasonably ancillary to the Commission's section 225(b)(1) responsibilities and will serve the core objectives of section 225 of the Act and the Commission's TRS rules by making TRS widely available and by providing functionally equivalent services for the benefit of individuals with hearing or speech disabilities.

33. *Point-to-Point Video Communication in ASL by Incarcerated People with Communication Disabilities.* The Commission also requires that where inmate calling services providers are required to offer access to all forms of TRS (*i.e.,* in jurisdictions with average daily populations of 50 or more, where broadband service is available), they also must provide access to point-to-point video communication for ASL users with communication disabilities. Many people who are deaf and whose primary language is ASL, and who are thus eligible to use VRS, have family, friends, and associates who are also deaf and whose primary language is ASL. To facilitate functionally equivalent communication among ASL users, the Commission has long required VRS providers to allow point-to-point calls

between ASL users who have been assigned VRS telephone numbers.

34. The record indicates that access to point-to-point video communication is similarly critical to ensuring functionally equivalent communication between incarcerated VRS users and the important people in their lives. As a commenter observes, ''because Deaf individuals who use sign language do not need assistance from a relay service to understand one another, they are able to communicate most effectively through direct, face-to-face conversation.'' Similarly, another commenter notes that ''[p]roviding direct communication services will . . . ensure that incarcerated people with disabilities are able to avoid further isolation within carceral facilities by allowing them to practice their primary form of communication.'' Therefore, incarcerated individuals with hearing and speech disabilities who require the use of video calling for effective communication must be afforded the same access to point-to-point video calling that incarcerated individuals without hearing and speech disabilities are given for voice calling. The record indicates that providing access to ASL point-to-point video communication, in addition to VRS, would not impose a significant additional cost or other burden on inmate calling services providers, as VRS providers already have the capability to provide this service in conjunction with VRS.

35. The Commission has authority to adopt this requirement pursuant to its Title I ancillary jurisdiction. As the Commission has previously explained, requiring that providers facilitate point-to-point communications between persons with hearing or speech disabilities is reasonably ancillary to the Commission's responsibilities in several parts of the Act. While point-to-point services are not themselves relay services, point-to-point services even more directly support the named purposes of sections 1 and 225 of the Act, 47 U.S.C. 151, 225, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation: they are more rapid in that they involve direct, rather than interpreted, communication; they are more efficient in that they do not trigger the costs involved with interpretation or unnecessary routing; and they increase the utility of the Nation's telephone system in that they provide direct communication—including all visual cues that are so important to persons with hearing and speech disabilities.

36. The Accessibility Coalition requests that the Commission allow entities other than VRS providers—*e.g.,* inmate calling services providers—to provide point-to-point video calling for incarcerated persons. The Commission notes that, to allow dialing of a ten-digit telephone number to connect an ASL point-to-point call between incarcerated persons and parties approved for telephone communication with them, a video communication platform must be able to access the TRS Numbering directory for information on routing such ASL point-to-point video calls to and from the TRS telephone number of an approved party. *See* 47 CFR 64.613. The Commission's current rules allow parties other than TRS providers to access the TRS Numbering Directory if they receive Commission authorization as a Qualified Direct Video Entity providing ''direct video customer support.'' *See* 47 CFR 64.613(c)(1)(v); *see also* 47 CFR 64.601(a)(15), (32). The Commission agrees that an inmate calling services provider wishing to provide ASL point-to-point video communication without the involvement of a VRS provider may request authorization as a Qualified Direct Video Entity. The Commission amends the rule governing access to the TRS Numbering directory to expressly provide for inmate calling services providers to request Qualified Direct Video Entity authorization to provide point-to-point video service in correctional facilities that enable incarcerated people to engage in real-time direct video communication in ASL.

37. *Compliance Date for Certain Amendments to § 64.6040.* To allow a reasonable time for inmate calling services providers that do not currently provide access to additional forms of TRS and to ASL point-to-point video communication in accordance with the rules adopted herein, the Commission sets January 1, 2024, as the deadline for compliance with the above-discussed amendments to § 64.6040 of its rules. To the extent that some providers' current contractual arrangements do not enable compliance with that rule as amended, this extended compliance date will allow inmate calling services providers a reasonable time to negotiate and implement any necessary changes to contracts with correctional authorities and TRS providers, and to make arrangements for the provision of user devices, secure TRS software, and any other necessary changes in their operations.

38. *Charges for TRS and ASL Point-to-Point Video Calls.* The Commission amends its rules to clarify the provision prohibiting inmate calling services providers from assessing charges for intrastate, interstate, or international TTY-based TRS calls, and to expand the scope of that rule to cover all forms of TRS, as well as point-to-point video calls conducted in ASL.

39. *Clarifying Amendment on Charging for TTY-based TRS.* Section 64.6040 of the Commission's rules currently states that ''[n]o [inmate calling services] Provider shall levy or collect any charge or fee for TRS-to-voice or voice-to-TTY calls.'' However, it appears that some inmate calling services providers may be interpreting this rule to allow the assessment of a charge on the called party, or a separate fee for using or accessing TTY equipment. Such stratagems contravene the rule's purpose to ensure that incarcerated people have free access to relay service. Therefore, the Commission amends § 64.6040 of its rules to expressly prohibit inmate calling services providers from levying or collecting any charge on *any* party to an intrastate, interstate, or international TTY-based TRS call, regardless of whether the party is the caller or the recipient and whether the party is an incarcerated person or is communicating with such individual, and regardless of whether the charge is characterized as a charge for the call itself or for the use of a device needed to make the call.

40. *Prohibition of Charges for Intrastate, Interstate, and International VRS, STS, and IP Relay.* In light of its action above to expand the kinds of relay services available to incarcerated people, the Commission also amends § 64.6040 of its rules to prohibit inmate calling services providers from charging either party to a VRS, STS, or IP Relay call, whether intrastate, interstate, or international, and whether characterized as a charge for the call itself or for use of a device to make such a call. The Commission notes that, to the extent that an inmate calling services provider incurs costs associated with the provision of access to TRS and point-to-point video, the Commission does not prohibit recovery of such costs in the provider's generally applicable rates for voice calls, provided such generally applicable rates comply with the Commission's rate-cap and other rules.

41. The Commission takes this step for several reasons. First, as discussed further below, Congress has clearly expressed its intent that consumers in general must not be subject to charges that discourage the use of relay services, and that inmate calling services providers in particular are not entitled

to compensation for each TRS call they carry. *See* 47 U.S.C. 225(d)(1)(D), 276(b)(1)(A). Second, while the Commission's rules permit limited charges to be assessed for the use of TRS in other contexts, 47 CFR 64.604(c)(4), the incarceration setting presents special considerations not present elsewhere. Incarcerated people tend to have extremely limited financial resources, and, due to their incarceration, do not have the same ability as other telephone users to choose among competitive telephone service offerings. Further, as the history of this proceeding amply demonstrates, telephone charges for inmate calling services are typically much higher than for ordinary telephone service. Also, due to the iterative nature of a communications assistant's (CA's) intermediating interactions with callers using VRS, STS, IP Relay, and TTY-based TRS, these types of TRS calls take longer than a voice call to communicate the same information. Therefore, if the per-minute inmate calling services rate for a voice call were applicable, total charges for such TRS calls would be substantially greater than for an equivalent voice call. Additionally, the Commission finds support in the record for prohibiting such charges.

42. Finally, in contrast with CTS and IP CTS (which present special considerations that are discussed below), due to the inherent nature of these services, the Commission finds it unlikely that VRS, STS, and IP Relay would be overused by incarcerated individuals who do not need these services. Like TTY-based TRS, VRS, STS, and IP Relay subject callers to recurring delays while a CA converts voice to text or ASL, and the reverse. These delays interrupt the natural flow of conversation and substantially lengthen the duration of the call. In addition, VRS requires the use of ASL, making it unlikely that incarcerated people who do not need VRS for functionally equivalent communication will seek to use it. Although IP Relay has been abused in the past, it is unlikely to be abused in the incarceration setting given the ability of inmate calling services providers and correctional authorities to supervise such use and monitor the content of conversations. Therefore, to ensure that incarcerated individuals who need these services are not deterred from using them by unaffordable costs, the Commission prohibits the imposition of charges on any party to an inmate calling services call for the use of these relay services or the devices needed to access them. Given the substantial justification for requiring that VRS access be provided free of charge, the Commission declines to allow charges for VRS of up to 25% of the per-minute calling rate to recover providers' additional costs of VRS access.

43. *Legal Authority.* The Commission concludes that it has statutory authority to take this step under section 225 of the Act, which expressly directs the Commission to ensure the availability of interstate *and intrastate* TRS. *See* 47 U.S.C. 225(b)(1). In addition, under section 201 of the Act, the Commission has authority to regulate the interstate charges and practices of common carriers. 47 U.S.C. 201. Congress expressly carved section 225 out from the Act's general reservation of state authority over intrastate communications. 47 U.S.C. 152(b). Responsibility for administering TRS is shared with the states only to the extent that a state applies for and receives Commission approval to exercise such responsibility. *See* 47 U.S.C. 225(c), (f)–(g). Indeed, section 225 of the Act affords the Commission, without limitation, ''the same authority, power, and functions with respect to *common carriers engaged in intrastate communication* as the Commission has in administering and enforcing the provisions of this [Act] with respect to any common carrier engaged in interstate communication.'' 47 U.S.C. 225(b)(2) (emphasis added). And as discussed above, the Commission has previously ruled it has authority to apply such regulations to providers of interconnected VoIP service pursuant to Title I ancillary jurisdiction. Section 225 of the Act also directs the Commission to ensure that the rates paid for TRS are *no greater than* the rates for functionally equivalent voice services, 47 U.S.C. 225(d)(1)(D), but does not preclude the Commission from setting a lower limit where necessary or appropriate to ensure that TRS is available in a particular setting.

44. Further, such a prohibition is consistent with section 276 of the Act, which requires the Commission to ensure that inmate calling services providers ''are fairly compensated for each and every completed intrastate and interstate call.'' 47 U.S.C. 276(b)(1)(A). Because TRS calls are expressly excluded from this mandate, section 276 of the Act does not entitle inmate calling services providers to receive *any* compensation for TRS calls. The regulation of intrastate TRS rates is also consistent with the D.C. Circuit's decision regarding the limits of the Commission's authority to regulate charges for intrastate inmate calling services under section 276 of the Act. In *GTL* v. *FCC,* the D.C. Circuit ruled that section 276 of the Act, by requiring that payphone service providers (including inmate calling services providers) be ''fairly compensated'' for every call using their phones, did not grant the Commission authority to cap intrastate rates based on a broader ''just, reasonable, and fair'' test. *See GTL* v. *FCC,* 866 F.3d 397, 402–12 (D.C. Cir. 2017). Here, the Commission does not purport to regulate intrastate rates under such a test; rather, as discussed above, the Commission relies on section 225 of the Act, which both explicitly applies to intrastate service and directs the Commission to set limits on charges for TRS calls.

45. The Commission does not apply this absolute prohibition to CTS and IP CTS calls. Unlike VRS, STS, and IP Relay, use of CTS and IP CTS does not require callers to accept delays in the natural flow of conversation or impose other inherent limitations, such as the necessity for VRS users to be able to sign in ASL. As a result, a telephone call using CTS or IP CTS is not significantly less convenient for a user than is an ordinary voice call, and unlike the other services discussed above, CTS and IP CTS are technically (although not legally) usable for ordinary phone calling by consumers who have no hearing or speech disabilities. Because voice services and telephones are relatively inexpensive for the general public, ordinarily there may be no particular incentive for a person without such disabilities to register for or use CTS and IP CTS. However, in the incarceration setting, where callers face unusually high telephone charges that they often can ill afford to pay, making the service available without charge could make it attractive for incarcerated people to request access to these services regardless of need, solely to make calls free of charge. Such requests for access could result in the imposition of administrative barriers that deter use of captioned telephone services by those who do need them. Therefore, rather than prohibiting any charge for the use of these services, the Commission requires adherence to the statutory ceiling on TRS charges. In other words, the Commission prohibits an inmate calling services provider from assessing—on either party to a CTS or IP CTS call, for either the service or the device(s) used—any charge in excess of the total amount that the inmate calling services provider charges, in the same correctional facility, for a non-relay voice telephone call of the same duration, time-of-day, jurisdiction, and distance. In effect, the Commission is

permitting ICS providers to charge for the voice component (but not for the TRS component) of the CTS or IP CTS call at the same rate charged to hearing users for an equivalent stand-alone voice call. The Commission notes that, although section 276 of the Act does not *entitle* inmate calling services providers to receive compensation for TRS calls, it does not prohibit the Commission from *allowing* providers to assess charges for such calls that are consistent with the limits set by section 225 of the Act.

46. Similarly, the Commission prohibits inmate calling services providers from assessing, on either party to a point-to-point video call conducted in ASL, any charge in excess of the total amount that the inmate calling services provider charges, in the same correctional facility, for a non-relay voice telephone call of the same duration, time of day, jurisdiction, and distance. Although ASL point-to-point video calls are not relay calls *per se,* placing such calls is necessary to ensure that functionally equivalent communication is available to persons who are deaf or hard of hearing and whose primary language is ASL. Therefore, for the same reason underlying the statutory prohibition on charging more for a relay call than for an equivalent voice call, the Commission concludes that its rules should similarly prohibit inmate calling services providers from charging more for an ASL point-to-point video call than for an equivalent voice call.

47. The Commission declines to prohibit all charges for ASL point-to-point video calls, as urged by the Accessibility Coalition. It is true that ASL point-to-point video does not pose the same eligibility determination concerns as those described above regarding captioned telephone service. However, because the Commission allows entities other than TRS providers to provide such services, the Commission permits the assessment of charges that do not exceed those for an equivalent voice call.

48. *Expanding Reporting Requirements Regarding TRS and Disability Access.* As a part of the Commission's Annual Reporting requirement, inmate calling services providers must submit certain information related to accessibility: ''[t]he number of TTY-based Inmate Calling Services calls provided per facility during the reporting period''; ''[t]he number of dropped calls the . . . provider experienced with TTY-based calls''; and ''[t]he number of complaints that the . . . provider received related to[,] *e.g.,* dropped calls, [or] poor call quality[,] and the number of incidents of each by TTY and TRS users.'' 47 CFR 64.6060. WCB recently revised the instructions and reporting template to require that providers report, on a facility-by-facility basis, any ancillary service charges they impose specifically for accessing and using TTY equipment and other disability-related inmate calling services technologies.

49. Given that the Commission is expanding the scope of its access mandate to all forms of TRS, and consistent with the language including other disability-related inmate calling services technologies in the revised reporting instructions, the Commission expands these reporting requirements to include all relay services. The Commission requires inmate calling services providers to list, at a minimum, for each facility served, the types of TRS that can be accessed from the facility and the number of completed calls and complaints for TTY–TTY calls, ASL point-to-point video calls, and each type of TRS for which access is provided. As in the *2015 ICS Order,* where the Commission applied these reporting requirements to TTY-based TRS calls, the Commission concludes that requiring this limited amount of reporting by inmate calling services providers will facilitate monitoring of call-related issues, encourage greater engagement by the advocacy community, and provide the Commission the basis to take further action, if necessary, to improve incarcerated persons' access to TRS. Moreover, in the event that some correctional authorities refuse to allow access to TRS, such reporting will provide the Commission with valuable data showing to what extent the rules adopted here are successfully implemented. With respect to the number of calls completed, the facility-by-facility approach is subject to possible modification by the Consumer and Governmental Affairs Bureau (CGB) and WCB in their exercise of the authority delegated to those Bureaus. The Commission directs CGB and WCB to consider the alternative of permitting reporting on a contract basis, in lieu of facility-by-facility reporting, in implementing the data collection requirements adopted in this final rule.

50. There is robust support in the record for this step. The Commission finds that the additional burden associated with providing limited reporting on this small category of calls is unlikely to be large and is outweighed by the benefits such reporting will offer in terms of greater transparency and heightened accountability on the part of inmate calling services providers. The Commission is not persuaded that expanded reporting requirements would discourage inmate calling services and TRS providers from providing access to additional forms of TRS—given that its amended rules *require* inmate calling services providers to provide such expanded access in any jurisdiction with an average daily population of more than 50, where broadband service is available. The Commission also declines the suggestion that complaints be reported in the aggregate and not by type. Complaints can be an important indicator of the presence of specific compliance issues; therefore, it is important that providers submit specific information identifying the nature of the complaint, the type of TRS, and the facility involved.

51. However, the Commission does not find it necessary to require inmate calling services providers to report the amount of call time spent on each form of accessible communication and the number of individuals in each carceral facility registered to use each service. The Commission is not convinced at this time that the additional benefits from collecting such information would justify the extra burden involved in gathering it. In addition, the Commission agrees that reporting the number of dropped calls is of little value, given that calls can be disconnected for a variety of reasons that do not necessarily reflect on the quality of the service provided, and therefore the Commission deletes this requirement.

52. *Removal of the Safe Harbor.* In adopting the reporting requirement for TTY-based TRS in 2015, the Commission stated that ''if an [inmate calling services] provider either . . . operates in a facility that allows the offering of additional forms of TRS beyond those we currently mandate or . . . has not received any complaints related to TRS calls, then it will not have to include any TRS-related reporting in [its] Annual Report . . . provided that it includes a certification from an officer of the company stating which prong(s) of the safe harbor it has met.'' *2015 ICS Order.* Given the expanded reporting requirement for additional forms of TRS, and the importance of transparency into the state of accessible communications in incarceration settings, the Commission concludes that this safe harbor is no longer appropriate. To assess the effectiveness of its policies and assist with enforcement, the Commission needs information on the extent to which TRS access is available throughout correctional systems. Further, given the inherently coercive

nature of corrections, lack of complaints from a particular jurisdiction or facility can be due to a number of factors and does not automatically indicate compliance with the Commission's rules.

53. *Delegation of Authority.* The Commission delegates authority to the Consumer and Governmental Affairs Bureau and WCB to implement this expanded reporting obligation and to develop a reporting form that will most efficiently and effectively elicit the information the Commission seeks. This delegation shall take effect on December 9, 2022. The Commission finds good cause for making this delegation take effect at that time because doing so will enable the Bureaus to move as expeditiously as practicable toward revising the instructions and reporting template for inmate calling services providers' Annual Reports, as set forth above. Given the importance of this expanded reporting to the Commission's efforts to ensure that incarcerated people with communication disabilities receive service that is functionally equivalent to that received by those without such disabilities, any unnecessary delay in this initiative would be inconsistent with the public interest.

Disability Access Requirements for TRS Providers—TRS Registration

54. To prevent waste, fraud, and abuse and allow the collection of data on TRS usage, the Commission's rules generally require that each individual using VRS, IP CTS, or IP Relay must be registered with a TRS provider. Further, VRS providers must submit user registration data to a central User Registration Database (User Database) administered under Commission supervision. Similar User Database registration and verification requirements apply to IP CTS providers. However, compliance with these requirements is not required until the User Database has been activated for registration of IP CTS users. Currently, the Commission's rules do not require that IP Relay registrations be submitted to the User Database.

55. As an alternative to individual registration, VRS providers may register videophones maintained by businesses, organizations, government agencies, or other entities and designated for use in private or restricted areas as ''enterprise videophones.'' 47 CFR 64.611(a)(6). This alternative form of registration is not available to IP CTS providers.

56. Based on the record, the Commission concludes that these TRS registration processes can be adapted to the incarceration context without major changes.

57. *Individual Registration.* To register individuals to use VRS, IP CTS, or IP Relay, a TRS provider must collect and maintain certain registration information from or regarding each prospective user. For VRS and IP CTS, this includes: the user's full name; residential address; telephone number; last four digits of the social security number or Tribal Identification number; date of birth; Registered Location (if applicable); dates of service initiation and (if applicable) termination; the date on which the user's identification was verified; and (for existing users only) the date on which the registered internet-based TRS user last placed a point-to-point or relay call. 47 CFR 64.611(a), (j). For IP CTS, a provider must also assign a unique identifier such as the electronic serial number (ESN) of the user's IP CTS device, the user's log-in identification, or the user's email address. 47 CFR 64.611(j)(2)(i)(D). This is not required for VRS because each VRS user is assigned a unique telephone number that is usable specifically for VRS. 47 CFR 64.611(a)(1). For IP Relay, the required registration is not expressly stated in the rules, but the Commission has interpreted the rule as requiring similar information.

58. In addition, to register individuals to use VRS or IP CTS, a TRS provider must obtain from each prospective user a certification, under penalty of perjury, that the user needs that form of TRS for effective communication and understands that the cost of the service is paid by a Federal program. 47 CFR 64.611(a)(3), (j)(1)(v). In addition, as part of the IP CTS user certification, a TRS provider must obtain certification that ''[t]he consumer understands that the captioning on captioned telephone service is provided by a live communications assistant who listens to the other party on the line and provides the text on the captioned phone,'' and that ''[t]he consumer will not permit, to the best of the consumer's ability, persons who have not registered to use internet protocol captioned telephone service to make captioned telephone calls on the consumer's registered IP captioned telephone service or device.'' 47 CFR 64.611(j)(1)(v)(B), (D).

59. For registration of VRS and IP CTS users, the above registration data and certifications also must be submitted to the User Database. 47 CFR 64.611(a)(4), (j)(2). Compensation for service to a new user is not paid until the user's identity has been verified by the administrator of the User Database. 47 CFR 64.615(a)(6). As noted above, the database for IP CTS user registration has not yet been activated.

60. *Enterprise Registration for VRS.* The rules on VRS enterprise registration presuppose that telephone numbers will be assigned to specific video-capable devices (videophones). Before service can be provided pursuant to an enterprise registration, an individual must be designated by the business or agency as responsible for the videophone, and must provide a certification to the VRS provider that the individual ''understands the functions of the videophone, [that] the cost of VRS calls made on the videophone is financed by the federally regulated Interstate TRS Fund, and . . . that the organization, business, or agency will make reasonable efforts to ensure that only persons with a hearing or speech disability are permitted to use the phone for VRS.'' 47 CFR 64.611(a)(6)(ii)(A). The certification may be signed and transmitted electronically. 47 CFR 64.611(a)(6)(ii)(B). For each such device, in addition to the assigned telephone number, the VRS provider must submit to the User Database: ''[t]he name and physical address of the organization, business, or agency where the enterprise . . . videophone is located''; ''the Registered Location of the phone if that is different from the physical address''; ''the type of location where the videophone is located''; the date of initiation of service; ''[t]he name of the individual responsible for the videophone''; ''confirmation that the provider has obtained the required certification'' from that individual; ''the date the certification was obtained by the provider''; and ''[w]hether the device is assigned to a hearing individual who knows sign language.'' 47 CFR 64.611(a)(6)(iii).

61. *Changes in TRS Registration Rules.* The Commission intends that incarcerated VRS users may be registered under either individual or enterprise registrations. Because the Commission's rules do not authorize enterprise registration for IP CTS and IP Relay users, incarcerated users of those services currently must have individual registrations. To facilitate the use of these registration procedures in the correctional setting, the Commission amends the TRS registration rules as described below.

62. *Individual Registration.* The Commission amends its rules to facilitate individual registration of eligible incarcerated people with disabilities for any form of internet-based TRS. The Commission notes that if an incarcerated individual is already registered to use VRS, IP Relay, or IP

CTS, then the TRS provider may continue to provide service to a user under that individual registration—unless such registration is dependent on conditions that no longer apply during incarceration (*e.g.,* if an IP CTS registration is tied to the electronic serial number (ESN) of a device that is no longer available to the individual). *See* 47 CFR 64.611(j)(2)(i)(D).

63. The Commission amends the rules to provide that the ''residential address'' specified for an incarcerated individual who has not previously registered with the VRS or IP CTS provider serving the facility shall be the address of the responsible correctional authority. Further, because 911 calls by incarcerated individuals are not permitted in a correctional facility, ''Registered Location''—that is, the physical location of the user—need not be included. For IP CTS, the telephone number specified shall be the same telephone number used by the inmate calling services provider to identify ordinary voice telephone calls placed to or from persons incarcerated in the correctional facility. Further, given that devices are not uniquely assigned to users, the unique user identifier specified in an IP CTS registration should be a log-in ID, email address (if available and unique to the user), or other unique identifier, rather than the electronic serial number of the user's device. In addition, for incarcerated persons who do not have a social security number or Tribal Identification number, the Commission allows TRS providers, as an alternative in such cases, to collect, and submit to the User Database, an identification number issued by the correctional authority. The TRS provider should obtain and provide to the TRS Fund administrator the incarcerated person's identification number and the name and address of the correctional facility providing the documentation.

64. To ensure that eligible incarcerated individuals can be promptly registered to use VRS and IP CTS, the Commission also amends the rule on verification of user registration data to allow TRS providers and the User Database administrator to accept documentation provided by an appropriate official of a correctional facility, such as a letter or statement from the official stating the name of the individual and that the individual resides in the facility, as verification of the identity and residence of an incarcerated individual seeking to use VRS or IP CTS. This change will prevent delay or denial of registration of an incarcerated individual to use these forms of TRS, due to lack of credit history or acceptable alternative documentation verification of the information provided to the User Database. The Commission does not require that the TRS provider receive such documentation directly from the issuing correctional official. As discussed above, the Commission requires inmate calling services providers to assist TRS providers in collecting the required registration information and documentation from users and from the correctional facility.

65. The Commission does not find that additional changes to its individual registration rules are needed. By requiring inmate calling services providers to assist TRS providers in collecting the required registration information and documentation, the Commission believes it has sufficiently addressed concerns about TRS providers' ability to collect such information on their own.

66. *Enterprise Registration for Incarcerated VRS Users.* There are significant differences between correctional facilities and other enterprise contexts. For example, as one commenter states, ''[i]ncarcerated individuals are regularly moved among facilities, and the inmate calling services equipment they use may not move with them.'' To facilitate enterprise registration for VRS in the correctional context, the Commission agrees with another commenter that ''a VRS provider should be able to register all the videophones and telephone numbers providing service to a single system's correctional facilities under a single account. A VRS provider should then be able to register a pool of telephone numbers under that account. It should also be able to register the main or administrative address for the correctional system in question, and that address would be considered to be the location of each kiosk used in that system.'' Given the security measures available to inmate calling services providers and correctional facilities, the Commission concludes that these changes to enterprise registration are unlikely to increase significantly the risk of waste, fraud, and abuse in TRS. The Commission accordingly adopts rule language consistent with the above proposals.

Disability Access Requirements for TRS Providers—Other Rules

67. *Confidentiality Rule Clarifications.* The Commission concludes that no amendment to its TRS confidentiality rule is necessary to address the security concerns of correctional institutions. Section 64.604(a)(2) of the Commission's rules, which applies to TRS providers and their CAs, does not impose obligations on other parties, such as inmate calling services providers, that are not eligible for TRS Fund compensation and are only providing a communications link to an authorized TRS provider. Specifically, the rule does not prohibit an inmate calling services provider or correctional facility from monitoring and recording the transmissions sent and received between an incarcerated person and the TRS provider's CA, in the same way as they monitor and record other inmate calling services calls, provided that the TRS provider and CA are not conducting such monitoring and recording. The comments confirm that it is common practice for inmate calling services providers to configure communications systems to allow monitoring or recording of calls, including TRS calls, by the inmate calling services provider or the correctional facility. For example, one TRS provider acknowledges that ''[while] Commission rules prohibit IP CTS providers from recording calls or retaining a transcript of the call after it has concluded . . . [f]or security reasons, [inmate calling services] providers often monitor and record calls.'' Similarly, another TRS provider states that it ''does not interpret the current confidentiality rules to prohibit an [inmate calling services] provider or a correctional facility from monitoring the transmissions between an incarcerated person and the VRS providers' CA so long as the VRS provider and the CA are not directly engaging in such monitoring.''

68. *Other TRS Rules.* The Commission also amends its rules to make clear that certain minimum TRS standards are not applicable to the incarceration setting. Specifically, the Commission amends its rules to provide that the types of calls, call durations, and calling features that TRS providers must offer incarcerated users are limited to those types of calls and call durations permitted for hearing people incarcerated in the correctional facility being served. In addition, the Commission does not require VRS providers to allow incarcerated users to choose their ''default provider'' or to place ''dial-around'' calls. *See* 47 CFR 64.611(a).

69. The Commission also notes that, as incarceration facilities do not allow incarcerated people to place 911 calls, TRS providers will not need to handle 911 calls from such facilities.

70. Finally, the Commission reminds TRS providers that its rules prohibiting the offering or provision of incentives to use TRS and other practices that encourage improper use of TRS are

applicable in the incarceration context as well as elsewhere. *See* 47 CFR 64.604(c)(8), (13).

Adopting Rules for the Treatment of Balances in Inactive Accounts

71. *Overview.* The Commission finds that all funds deposited into a debit-calling or prepaid-calling account and not spent on products or services shall remain the account holder's property unless they are disposed of in accordance with either a controlling judicial or administrative mandate, or applicable state law requirements. The Commission also finds that any action inconsistent with this finding (whether by a provider or an entity acting on a provider's behalf) constitutes an unjust and unreasonable practice within the meaning of section 201(b) of the Act. 47 U.S.C. 201(b). To protect account holders and incarcerated people pending further consideration of this matter based on the record to be developed in response to the requests for comment in the *Sixth FNPRM,* the Commission prohibits providers of inmate calling services from seizing or otherwise disposing of unused funds in a debit-calling or prepaid-calling account, except through a full refund to the account holder, until at least 180 calendar days of continuous account inactivity has passed. At that point in time (or at the end of any alternative time frame set by state law), the provider must make reasonable efforts to refund the balance in the account to the account holder and, if those efforts fail, must treat funds remaining in the inactive account in accordance with any controlling judicial or administrative mandate or applicable state law requirements. To clarify, while providers may elect to issue refunds to account holders they consider inactive during the 180-day inactivity period, in no event, unless required by any controlling judicial or administrative mandate or state law, may a provider deem funds unclaimed or abandoned prior to the 180-day period.

72. The Commission disagrees with the argument by Securus Technologies, LLC (Securus) that further record development is required before the Commission may act concerning the refund of debit accounts, nor does the Commission find merit in the other reasons they offer for delay. To the extent that the refund of funds in such debit accounts is ''based on agreements between providers and correctional authorities,'' Securus has offered no reasons why providers would be unable to revise such agreements within the requisite 180-day window. To the contrary, rather than demonstrate that such refunds ''do[ ] not work'' as they claim, Securus admits that ''an incarcerated person is provided with the balance on their debit account, either by the agency or Securus'' upon release or transfer, and adds that ''Securus is already making reasonable efforts to refund the balance in such accounts to the releasing individual.'' These assertions undercut Securus's request for delay, and at any rate, the refund rules the Commission adopts in this final rule appear to be consistent with Securus's debit account refund practices.

73. *Background.* The Commission's rules contemplate two types of advance payments for inmate calling services and associated permissible ancillary service fees. These arrangements are chiefly distinguishable by the difference in the identity of the payor and the holder of the account. Under the first type of advance payment—debit calling—the incarcerated person is the account holder, and the incarcerated person (or someone acting on their behalf) deposits funds into a provider account that can be used to pay for the incarcerated person's calls and other expenses. By contrast, the second type of advance payment—prepaid calling—involves a provider account in which calling expenses may be paid in advance, which is held and funded by a consumer other than the incarcerated person. The purpose behind depositing funds under either arrangement is to pay for inmate calling and associated ancillary services.

74. Commenters have long alleged that providers have implemented opaque debit-calling and prepaid-calling account balance policies that harm consumers. Among other alleged abuses, commenters previously had contended that providers ''are actually taking prepaid monies from prisoner accounts if for whatever reason the account is 'inactive.' '' In response to these and other allegations of abusive ancillary charges the Commission prohibited providers of inmate calling services from charging consumers any ancillary service charges other than the five types specifically permitted by the Commission's rules, but did not directly address the treatment of unused funds remaining in consumer accounts after a period of inactivity. Consequently, the prohibitions on certain types of ancillary service charges did not eliminate all problems related to debit or prepaid account maintenance and closures.

75. In document FCC 21–60, the Commission expressed concern regarding providers' practices with respect to unused funds in inactive accounts and invited comment on whether the Commission should require refunds after a certain period of inactivity and, if so, what timeframe would be appropriate. The record shows that some providers treat a debit or prepaid account as ''inactive'' after a certain period of time—as little as 90 days—then take possession of any funds remaining in the ''inactive'' account. Thus, the account holder loses deposited funds merely by inaction. While the individual sums involved may be modest by some standards, they likely represent meaningful amounts to many of the individuals and families who are being unjustly deprived of these funds. The record also establishes that, collectively, the amounts involved can represent a significant windfall to the providers, which have strong incentives to retain these funds for themselves.

76. *Discussion.* The Commission finds that all funds deposited into any account that can be used to pay for interstate or international inmate calling services remain the property of the account holder unless or until they are either: used to pay for products or services purchased by the account holder or the incarcerated person for whose benefit the account was established; or disposed of in accordance with a controlling judicial or administrative mandate or applicable state law requirements, including, but not limited to, requirements governing unclaimed property. Any action by a provider, or other entity acting on a provider's behalf, that is inconsistent with this finding constitutes an unjust and unreasonable practice that the Commission prohibits pursuant to section 201(b) of the Act.

77. The Commission's actions extend to commingled accounts that can be used to pay for both interstate and international calling services and nonregulated services such as tablets and commissary services. As the Commission explained in the *2020 ICS Order on Remand,* where the Commission has jurisdiction under section 201(b) of the Act to regulate the rates, charges, and practices of interstate communications services, ''the impossibility exception extends that authority to the intrastate portion of jurisdictionally mixed services 'where it is impossible or impractical to separate the service's intrastate from interstate components' and state regulation of the intrastate component would interfere with valid federal rules applicable to the interstate component.'' Rates for Interstate Inmate Calling Services, published at 85 FR 67450, October 23, 2020 (*2020 ICS Order on Remand*). In

the *2020 ICS Order on Remand,* the Commission found that ancillary service charges ''generally cannot be practically segregated between the interstate and intrastate jurisdiction'' except in a limited number of cases where the ancillary service charge clearly applies to an intrastate-only call. Applying the impossibility exception, the Commission concluded that providers generally may not impose any ancillary service charges other than those specified in the Commission's rules and are generally prohibited from imposing charges in excess of the ancillary service fee caps. Here, commingled accounts contain funds that can be used to pay for interstate and international calling, over which the Commission has jurisdiction, as well as intrastate calling and nonregulated services. The Commission concludes that it cannot practically segregate the portion of the funds in those accounts that may be used to pay for interstate or international calling services from the portion that may be used to pay for intrastate calling services and nonregulated services. Because the Commission cannot practically segregate funds in commingled accounts, the Commission concludes that such accounts are subject to the actions the Commission takes therein; and rejects any suggestion to the contrary. By contrast, the Commission's rules do not prevent providers from creating separate accounts for use with nonregulated services.

78. Sections 201 and 202 of the Act set out broad standards of conduct, and the Commission gives the standards meaning by defining practices that run afoul of carriers' obligations, either by rulemaking or by case-by-case adjudication. Acting pursuant to section 201(b) of the Act, the Commission has generally found carrier practices unjust and unreasonable where necessary to protect competition and consumers against carrier practices for which there was either no cognizable justification for the action or where the public interest in banning the practice outweighed any countervailing policy concerns. Here, when providers take possession of unused funds in customers' accounts, they deprive[ ] consumers of money that is rightfully theirs. While ''consumer'' is defined in the Commission's rules as ''the party paying a Provider of Inmate Calling Services,'' the Commission notes that it uses the term customer herein to denote an incarcerated person who uses the calling services offered to place a call, regardless of whether a separate party has actually paid for the service. No commenter supports this practice, and the Commission finds no countervailing policy concerns or cognizable justification for this practice sufficient to outweigh the public interest in ensuring that consumers have access to funds that are rightfully theirs. Pay Tel Communications, Inc. (Pay Tel) suggests that high turnover in jails increases the likelihood that a pre-funded account will require a refund, leading to higher costs associated with administering such refunds. Nevertheless, Pay Tel ''strongly believes that monies placed in inmate accounts that are unused should be refunded to the customer rather than absorbed by the [inmate calling services] provider as service 'revenue.' '' And these practices are even more clearly unjust and unreasonable if providers violate state laws when managing these accounts, which has been alleged in some instances. For these reasons, the Commission finds the practice of taking possession of unused funds in customer accounts to be unjust and unreasonable under section 201(b) of the Act and prohibits it.

79. In the *Sixth FNPRM,* the Commission seeks comment on how it can best prevent providers of inmate calling services from engaging in unjust and unreasonable practices related to unused funds in any customer account that can be used to pay for interstate or international calls. To protect account holders and incarcerated people from such practices, pending a full consideration of the record to be developed in response to the Further Notice, the Commission prohibits providers of inmate calling services from seizing or otherwise disposing of funds deposited in a debit calling or prepaid calling account until at least 180 calendar days of continuous account inactivity has passed, except when funds are tendered for services rendered, refunded to the customer, or disposed of in accordance with a controlling judicial or administrative mandate or applicable state law requirements, including, but not limited to, requirements concerning unclaimed property in such accounts. The Commission has revised § 64.6130(b) of its rules to make clear that during this 180-day period a provider may make refunds or dispose of funds in accordance with a controlling judicial or administrative mandate or an applicable state law requirement. A controlling judicial or administrative mandate includes, in this context, any final (*i.e.,* no longer appealable) court order requiring the incarcerated person to pay restitution, any fine imposed as part of a criminal sentence, and any fee imposed in connection with a criminal conviction. It also includes any final court or administrative agency order adjudicating a valid contract between the provider and the account holder, entered into prior to the release of document FCC 22–76, that allows or requires that the provider act in a manner that would otherwise violate the Commission's rule on the disposition of funds in inactive accounts. The Commission does not address in document FCC 22–76 the ultimate disposition of unclaimed funds in a debit calling or prepaid calling account in circumstances where there is no controlling judicial or administrative mandate and state law does not affirmatively require any particular disposition. Instead, the Commission reserves that issue for further consideration based on the record to be developed in response to the requests for comment in the *Sixth FNPRM.* In reserving this issue, the Commission addresses two commenters' opposition to the Commission's proposal that providers must dispose of unused funds in debit or prepaid accounts in accordance with the Uniform Unclaimed Property Act in circumstances where the providers' refund efforts fail and state law is unclear. The Commission declines, however, to adopt draft rules that would terminate account holders' property interests in those funds in such circumstances. As the Commission has noted, it seeks to obtain a more robust record on this issue before adopting final rules to govern such situations.

80. The period of inactivity (or dormancy) must be continuous, such that any of the following actions by an account holder or an incarcerated person will restart the 180-day clock: depositing, crediting, or otherwise adding funds to an account; withdrawing, spending, debiting, transferring, or otherwise removing funds from an account; or expressing an interest in retaining, receiving, or transferring the funds in an account, or otherwise attempting to exert or exerting ownership or control over the account or the funds held within the account. The Commission disagrees with Securus's contention that ''an expression of interest'' is unduly vague. The Commission finds instead that the successive activities it lists—retaining, receiving, or transferring the funds in an account, or otherwise attempting to exert or exerting ownership or control over the account or the funds held within the account—are more than sufficiently descriptive under standard principles of construction. To the extent

an account holder requests a refund of the account balance at any time during the 180-day period, the Commission expects the provider to promptly issue such refund. The Commission finds that a 180-day timeframe is a reasonable period of time that offers account holders and incarcerated persons an adequate window during which they may exert custody or control before they risk forfeiting their funds, and the Commission clarifies that this timeframe will not begin to run until the effective date of this final rule. The record shows that a 180-day period is a reasonable amount of time before deeming an account inactive. This window provides more time than the shortest ''inactive'' period of which the Commission is aware, reducing the risk that providers will seize funds inappropriately or prematurely. It is also similar to the time frame several inmate calling services providers currently appear to follow, suggesting that implementation of this time frame is unlikely to cause providers undue burdens. Certain providers find the burden so low that their policy is to hold consumer deposits indefinitely. No commenter suggests that a 180-day time frame and an obligation to process refunds would impose a significant burden on providers. Instead, the record now before the Commission indicates that processing refunds after 180 days of inactivity will impose only a marginal burden on providers.

81. Although Securus requests that providers be granted 90 days after the effective date of the final rule to comply with the refund requirement, clarifying that the 180-day period of inactivity begins on the final rule's effective date will provide an even greater period of time for Securus and other providers to implement the refund requirement, as they will not have to take action to track accounts to issue refunds until 180 days after the Commission's refund rules become effective. Thus, Securus and other providers actually have more than 180 days to make any necessary system, contractual or tariff-related adjustments, well more than the 90 days Securus seeks.

82. At the conclusion of the 180-day period (or at the end of any alternative time frame set by state law), the provider must make reasonable efforts to refund the balance in the account to the account holder and, if those efforts fail, the provider must treat that balance in accordance with applicable state law requirements, including, but not limited to, state consumer protection laws. Providers need not comply with the Uniform Unclaimed Property Act except to the extent it has been incorporated into state law. If the provider has adopted a shorter period of time for attempting refunds for accounts, these rules do not disturb the ability of account-holders to obtain a refund upon request or within the 180-day period. Under no circumstances, however, except to the extent required by state law, can a provider consider funds in an inactive account abandoned prior to 180 days of continuous inactivity. Stated differently, 180 days of continuous inactivity, as defined above, is the minimum amount of time that must pass before providers may treat funds in an account used to pay for interstate or international inmate calling services as ''abandoned,'' except where state law provides a different period. Together, these steps will help ensure that account holders are not deprived of funds that are rightfully theirs.

83. These measures will remain in place until the Commission takes further action on these issues pursuant to the requests for comment in the *Sixth FNPRM.* In document FCC 21–60, the Commission sought comment on whether it should adopt rules requiring refunds ''after a certain period of inactivity''. In light of the Commission's finding under section 201(b) of the Act, the Commission finds these standstill steps necessary to ensure that funds are not disbursed or otherwise irretrievably lost while the Commission considers additional rules. In the meantime, the actions the Commission takes in this final rule will help prevent providers from unjustly enriching themselves by taking possession of account holder funds or otherwise engaging in unjust or unreasonable practices in relation to those funds. The Commission makes no finding in this final rule regarding whether funds in an inactive account are ''unclaimed property'' within the meaning of any state law or otherwise addresses the requirements of any state law. Instead, the Commission decides, pursuant to its authority under section 201(b) of the Act, that those funds remain the account holder's property under certain circumstances and, to make clear that the Commission is not ruling on any question arising under state law, the Commission excludes from those circumstances the disposal of the funds in accordance with applicable state law, including any state laws governing unclaimed property. Thus, Securus's observations that document FCC 21–60 ''provided no notice that the Commission intended to address the treatment of unclaimed property'' and that the Commission lacks jurisdiction to ''interpret state property law'' are inapplicable.

84. The Commission declines to expand these prohibitions at this time as it is still developing the record. The Commission needs additional information before it can evaluate proposals to require providers to issue refunds ''automatically.'' Although the record suggests that issuing account refunds for consumers who paid by credit card would be relatively nonburdensome, it does not address in detail the burdens involved in issuing refunds under other circumstances. For example, the record does not illustrate the costs nor methods of providing refunds to a consumer who paid in cash or via a third party and cannot be located at a last known address. Likewise, the Commission will need to develop a more complete record before deciding whether to require providers to notify consumers before designating accounts as ''inactive'' or ''dormant.'' To that end, the Commission seeks comment in the *Sixth FNPRM* on specific questions that are designed to develop a fuller record on these and other issues related to the disposition of unused funds in calling services accounts.

85. Finally, the Commission reiterates that its ancillary service charges rules preclude providers from charging consumers for maintaining inactive debit-calling or prepaid-calling accounts that were established, in whole or in part, to pay for interstate or international inmate calling services and associated ancillary services. The record contains various examples of such charges, such as ''[p]repaid refund processing fees,'' ''Western Union Debit Refund Processing Fee,'' and ''monthly account maintenance fee[s].'' Because such services are not among the five enumerated types of ancillary services for which providers are permitted to assess charges, any fees for such services in connection with accounts that can be used for interstate or international inmate calling services and associated ancillary services are barred under the Commission's rules. Those rules also prohibit providers from charging consumers fees to close or obtain refunds from such calling services accounts. The Commission has already considered this issue, declining to allow such recovery as part of the *2015 ICS Order* adopting the current list of permissible ancillary service charges. The Commission sees no reason to revisit that issue now. The Commission therefore declines Securus's request that it allow providers to recover third-party fees incurred when refunding amounts to a consumer. To the extent any provider is imposing such charges, it

may be subject to an enforcement action.

Lowering the Single-Call Services and Third-Party Financial Transaction Fee Caps

86. To reduce the economic burdens on incarcerated people and their loved ones from unnecessarily high ancillary service charges, the Commission lowers the maximum amount for third-party fees that inmate calling services providers may pass on to consumers for single-call services and third-party financial transactions. For the purpose of this Synopsis and in the interest of brevity, the Commission refers to single-call and all related services as ''single call services.'' The Commission's use of this terminology is merely for convenience and does not reflect any changes to the rules other than those specifically set forth in the revised rules set out at the end of this final rule. In the *2021 ICS Order,* the Commission set both of these caps at $6.95 on an interim basis. The Commission now adopts lower permanent caps limiting these fees to a maximum amount of $3.00 when the fee is paid through an automated payment system and $5.95 when the fee is paid through a live agent. The Commission finds that this approach, which is unopposed in the record, will provide immediate financial relief to incarcerated people and their loved ones while the Commission continues to consider further reforms to its ancillary service charges rules.

87. *Background.* In the *2021 ICS Order,* the Commission capped, on an interim basis, the third-party fees inmate calling services providers may pass through to consumers for single-call services and third-party financial transactions at $6.95 per transaction. The Commission set these caps based on record evidence that this amount reflected the rate that one of the most prominent third-party money transfer services charged the largest inmate calling services provider, reasoning that fixed interim caps were necessary to close loopholes in the Commission's rules that had encouraged providers to seek out, as part of revenue-sharing schemes, artificially high rates for these services from third parties. In adopting the interim caps, the Commission found that it lacked sufficient record evidence to adopt a proposal from NCIC Inmate Communications (NCIC) to cap single-call services fees at $3.00 for automated credit card payments, debit card payments, and bank payments (collectively, automated transactions) and $5.95 for payments made through live agents, including payment through money transmittal services. Following the adoption of the *2021 ICS Order,* NCIC filed a Petition for Reconsideration expounding upon its prior proposal and arguing that the Commission had erred in adopting the $6.95 cap by ''confus[ing] two distinct and separate transaction fees.'' NCIC explained that single-call services are ''generally billed such that a provider may add up to a $3.00 automated transaction fee for each call'' and that third-party financial transaction fees ''relate to cash and online deposits with Western Union, MoneyGram, and other money transmittal services that had permitted certain [inmate calling services] providers to add 'kickbacks' on top of their normal transaction fees.'' NCIC further explained that the $6.95 cap applicable to third-party fees ''may offset all the efforts of the [Commission] in trying to reduce costs to inmates and their families'' and encouraged the Commission to ''use the ancillary caps of $3.00 for automated transactions and $5.95 for live agent fees, as the baseline for any further changes.'' Now that the Commission has sufficient notice and a better record, the Commission is revising its interim caps for single call services and third-party financial transaction fees, as NCIC urges. In view of this action, the Commission dismisses as moot NCIC's Petition for Reconsideration to the extent it relates to those interim caps. The Commission presently declines to act on the remainder of that petition as it is unrelated to the issues that are the focus of document FCC 22–76.

88. In document FCC 21–60, however, the Commission sought comment on NCIC's proposal. To the extent a $6.95 fee is assessed by a third-party money transmittal service in conjunction with funding an inmate calling services account, the record confirms that such fees are charged directly by the money transmittal company to the consumer.

89. *Discussion.* The Commission reduces to $3.00 the maximum amount that inmate calling services providers may pass through to a consumer for single-call services and any third-party financial transactions where the transaction involves the use of an automated payment system, and the Commission reduces to $5.95 the maximum amount where the transaction involves the use of a live agent.

90. When it adopted the interim $6.95 caps in the *2021 ICS Order,* the Commission admittedly lacked a sufficient record to fully evaluate NCIC's proposal calling for lower rates. At the time of the *2021 ICS Order,* the Commission also lacked sufficient information about the relationship between fees for single-call services and third-party financial transactions and the automated payment and live agent fee caps. This led the Commission to seek comment on that relationship in document FCC 21–60. In response, commenters clarify that fees for single-call services and third-party financial transactions can be paid through an automated payment system (corresponding with the $3.00 automated payment fee) or via a live agent (corresponding with the $5.95 live agent fee). Under the current definition, single calls are billed through a third party when the called party does not have an account with the inmate calling services provider. The Commission seeks comment on third-party involvement in single call scenarios in the *Sixth FNPRM.* The record confirms that payment for these calls can be made through either an automated payment system or via a live agent.

91. By contrast, third-party financial transaction fees are fees charged by third parties to inmate calling services providers to ''transfer money or process financial transactions'' to facilitate payments to consumers' accounts with inmate calling services providers. In those situations, account payments can be made through either an automated system or via a live agent that directs the consumer to a third party to process the account payment. In both cases, payments are being made through one of two payment channels: through an automated payment system or via a live agent. These clarifications persuade the Commission that the interim $6.95 caps exceed the costs incurred for such transactions and do not appropriately reflect the type of payment channels actually used in connection with single-call services and third-party financial transactions. The Commission thus reduces the maximum amount that providers can pass through to consumers. These measures will reduce inmate calling services providers' ability to overcharge consumers for single-call services and third-party financial transactions, as the Commission further weighs other proposals related to its ancillary service charges rules and analyzes the providers' responses to the Third Mandatory Data Collection.

92. One of the Commission's goals in replacing the pass-through caps for single-call services and third-party financial transaction fees with fixed caps in the *2021 ICS Order* was to curtail the incentives for providers to engage in revenue-sharing schemes, *i.e.,* abusive provider practices that drive up prices for consumers. Commenters now highlight that the $6.95 cap the Commission adopted in the *2021 ICS Order,* while reducing the financial

incentives to engage in these schemes stemming from the prior absence of any limit on the third-party charges that could be passed through to consumers, may have actually incentivized providers to increase charges for consumers. Other commenters argue that this $6.95 cap incentivized providers to rely on third parties for processing such payments more frequently, pursuant to revenue-sharing agreements. Reducing the $6.95 cap to $5.95 will reduce these incentives. Given evidence in the record that both single-call services and third-party financial transactions involve payment through an automated payment system or a live agent, the Commission finds that, pending its analysis of the data submitted in response to the Third Mandatory Data Collection, the amounts providers may charge for those services may not exceed the amounts providers are already permitted to charge for automated payment services (capped at $3.00) and live agent services (capped at $5.95).

93. The Commission declines suggestions that it defer any action on its ancillary service charges rules to a later date or that it undertake more sweeping reforms at this time. On the one hand, some commenters suggest that the Commission wait before taking any actions regarding ancillary service charges to observe how the market reacts to changes from the Commission's prior actions. The record offers no reason why the market should require time beyond today to stabilize, particularly where providers have previously found 90 days to be a sufficient transition period (and when the Commission's revised rules have been in effect for even longer). The Commission finds no reason for such delay. Nor is the Commission required to await perfect data before acting. On the other hand, other commenters encourage us to lower the $3.00 cap on automated payment fees, to prohibit single call fees altogether, to take a more forceful actions to prevent ''double-dipping,'' and to require that each newly incarcerated person receive two free calls.

Amending the Definitions of ''Jail'' and ''Prison''

94. The Commission next amends the definitions of ''Jail'' and ''Prison'' in § 64.6000(m) and (r) of its rules to conform those definitions with the Commission's intent to include every type of facility where individuals can be incarcerated or detained, as explained in the *2015 ICS Order.* In document FCC 21–60, the Commission proposed to amend its definition of ''Jail'' by explicitly including facilities of ICE and the BOP, whether operated by the law enforcement agency or pursuant to a contract. The Commission also proposed to add the term ''juvenile detention facilities'' and ''secure mental health facilities'' to the definition of ''Jail'' and asked whether it should make other changes to its definitions of ''Jail'' or ''Prison.'' The Commission adopts the proposed changes to ensure that its inmate calling services rules apply to all incarceration facilities.

95. The Commission revises the definition of ''Jail'' to explicitly include detention facilities operated by ICE. In the *2015 ICS Order,* the Commission explained that the term ''Jail'' was meant to include, among other facilities, ''facilities used to detain individuals pursuant to a contract with [ICE] and facilities operated by ICE.'' The relevant part of the codified definition, however, encompasses only ''facilities used to detain individuals *pursuant to a contract*'' with ICE, failing to specifically include facilities operated by the agency, creating a gap in the Commission's rules. Encompassing facilities operated by ICE aligns the definition with the Commission's intended meaning and ensures that the Commission's inmate calling services rules protect individuals detained in all ICE facilities regardless of how they are operated.

96. Similarly, the Commission revises the definition of ''Jail'' to explicitly include detention facilities operated by the BOP or pursuant to a contract with the BOP. As the Commission explained in the *2015 ICS Order,* the term ''Jail'' was meant to include facilities operated by Federal law enforcement agencies that are used primarily to hold individuals who are ''awaiting adjudication of criminal charges,'' are ''committed to confinement to sentences of one year or less,'' or are ''post-conviction and awaiting transfer to another facility.'' The codified definition, however, fails to mention the BOP, thus creating potential confusion as to whether facilities of the type described in the definition should be classified as ''Jails'' if they are operated by the BOP or pursuant to contracts with the BOP, given the use of the word ''Prison'' in the name of the facility. To eliminate this potential confusion, the Commission amends its definition of ''Jail'' to explicitly include facilities operated by the BOP, or pursuant to a contract with the BOP, that otherwise meet the existing definition of ''Jail.''

97. The Commission also revises its definition of ''Jail'' to explicitly include all ''juvenile detention facilities'' and ''secure mental health facilities'' that operate outside of facilities that are otherwise classified as prisons or jails under the Commission's rules. In the *2015 ICS Order,* the Commission found that providing inmate calling services in juvenile detention facilities and secure mental health facilities was ''more akin to providing service to jail facilities'' and instructed that ''[t]o the extent that juvenile detention facilities and secure mental health facilities operate outside of jail or prison institutions'' they would be subject to the rate caps applicable to jails. The codified definition of ''Jail,'' however, does not mention either ''juvenile detention facilities'' or ''secure mental health facilities.'' The Commission's revised definition of ''Jail'' explicitly lists all such facilities, thus ensuring that individuals held in those facilities will be covered by the Commission's rules, as the Commission intended.

98. Finally, in document FCC 21–60, the Commission sought comment on whether there are types of correctional facilities, in addition to those discussed above, that should be explicitly added to the codified definitions of ''Jail'' or ''Prison.'' The Commission now amends the definition of ''Prison'' in § 64.6000(r) of its rules to avoid potential confusion. In the *2015 ICS Order,* the Commission made clear that the term ''Prison'' should be restricted to facilities in which the majority of incarcerated people are sentenced to terms in excess of one year. This criterion is reflected in the first sentence of § 64.6000(r) of the Commission's rules. The second sentence of that rule states, however, that the term ''Prison'' includes certain facilities ''in which the majority of'' incarcerated people ''are post-conviction *or* are committed to confinement for sentences of longer than one year.'' The Commission replaces the disjunctive (''or'') with the conjunctive (''and'') in this sentence to make clear that a facility that otherwise meets the definition of ''Jail'' should be classified as a ''Prison'' only if the majority of its incarcerated people are both post-conviction *and* confined for more than one year. This change ensures that the definition conforms with the Commission's intent when it first adopted the rule.

99. Because § 64.6020 of the Commission's rules addresses five different types of ancillary service charges, the Commission also amends the heading of that rule to read ''Ancillary Service Charges,'' rather than ''Ancillary Service Charge.'' The Commission finds good cause to make this revision without notice and comment because it is editorial and

non-substantive, and therefore notice and comment is unnecessary.

Supplemental Final Regulatory Flexibility Analysis

Need for, and Objectives of, the 2022 Fourth Report and Order

100. Document FCC 22–76 adopts rules to improve access to communications services for incarcerated people with communication disabilities. Through these rules, the Commission requires that all inmate calling services providers provide access to all relay services eligible for TRS Fund support in any correctional facility in a jurisdiction with an average daily population of 50 or more inmates, where broadband is available, with the exception of non-IP CTS in facilities where IP CTS is offered. Non-IP CTS is required in any facility in a jurisdiction with an average daily population of 50 or more inmates, where IP CTS is not provided. The Commission also requires that where inmate calling services providers are required to provide access to all forms of TRS, they also must allow ASL point-to-point, video communication. Document FCC 22–76 amends the Commission's rules to clarify the rule prohibiting inmate calling services providers from assessing charges for TTY-based TRS calls. The Commission further expands the requirements under this section to prohibit inmate calling services providers from charging either party to VRS calls, STS calls, and internet Protocol Relay Service (IP Relay) calls, and adopts limits on the charges for internet Protocol Captioned Telephone Service calls, TTY-to-TTY calls, and point-to-point video calls conducted in ASL. The Commission also expands inmate calling services providers' annual reporting requirements to include all relay services. The Commission requires providers to list, for each facility served, the types of TRS that can be accessed from the facility and the number of completed calls and complaints for TTY-to-TTY calls, ASL point-to-point video calls, and each type of TRS for which access is provided. The Commission expands these reporting requirements regarding TRS and disability access to increase transparency and accountability into deployment and usage of TRS by incarcerated people with communication disabilities. The Commission also amends TRS user registration requirements to facilitate the use of TRS by eligible incarcerated individuals.

101. Document FCC 22–76 adopts other reforms to lessen the financial burden incarcerated people and their loved ones face when using calling services, as contemplated by document FCC 21–60. First, document FCC 22–76 prohibits providers from seizing or otherwise disposing of funds in inactive calling services accounts until at least 180 calendar days of continuous inactivity has passed in such accounts, except when funds are tendered for services rendered, disposed of in accordance with a controlling judicial or administrative mandate or state law requirement, or refunded to the customer. Second, document FCC 22–76 lowers certain ancillary service rate caps on provider charges for individual calls when neither the incarcerated person nor the person being called has an account with the provider. Document FCC 22–76 also lowers rate caps on provider charges for processing credit card, debit card, and other payments to calling services accounts. Finally, document FCC 22–76 amends the definitions of ''Jail'' and ''Prison'' to include institutions that the Commission has long intended to include in those definitions. *See* 47 U.S.C. 201, 225, 276.

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

102. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Types of Small Entities to Which Rules Will Apply

103. The types of entities affected are: wired telecommunications carriers; local exchange carriers; incumbent local exchange carriers; competitive local exchange carriers; interexchange carriers; local resellers; toll resellers; other toll carriers; payphone service providers; TRS providers; and other telecommunications.

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

104. Document FCC 22–76 requires inmate calling services providers to provide incarcerated, TRS-eligible users the ability to access any relay service eligible for TRS Fund support, subject to some limitations. Providers must take all steps necessary to ensure that access to an appropriate relay service is made available promptly to each inmate who has a disability. In any correctional facility in a jurisdiction with an average daily population of 50 or more, located where broadband service is available, they must offer access to all forms of TRS and to ASL point-to-point video communication service.

105. As a part of the Commission's Annual Reporting and Certification Requirements, inmate calling services providers are required to submit certain information related to accessibility, including all relay services. Providers must list, for each facility served, the types of TRS that can be accessed from the facility and the number of completed calls and complaints for TTY-to-TTY calls, ASL point-to-point video calls, and each type of TRS for which access is provided. To facilitate TRS registration of eligible, incarcerated individuals, the Commission revises the data that TRS providers must collect. The Commission also allows enterprise registration for incarcerated VRS users.

106. Document FCC 22–76 prevents inmate calling services providers from seizing or otherwise disposing of funds deposited in a debit calling or prepaid calling account until at least 180 calendar days of continuous account inactivity has passed, except when funds are tendered for services rendered, disposed of in accordance with a controlling judicial or administrative mandate or state law requirement, or refunded to the customer. This rule is adopted on an interim basis, pending the Commission's analysis of additional information. Document FCC 22–76 also refines the interim rate caps for certain ancillary service charges. Specifically, it lowers the maximum ancillary services fees for single-call services and third-party financial transactions to $3.00 for single-call services and third-party financial transactions that involve automated payments, and to $5.95 for payments facilitated by a live agent.

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

107. To address concerns raised by an inmate calling services provider that serves small rural jails, the Commission limits the scope of a provider's obligation to provide access to additional forms of TRS, pending further consideration of the costs, benefits, and alternatives to such obligations. The Commission does not require inmate calling services providers to offer such access in jurisdictions with an average daily population of fewer than 50 incarcerated individuals. The new rules requiring providers to provide access to ASL point-to-point video communication, in addition to VRS, will not impose a significant cost or other burden on inmate calling services

providers, as VRS providers already have the capability to comply with this requirement.

108. The Commission adopts an interim rule on the treatment of balances in inmate calling services accounts under which an account is considered ''inactive'' only after 180 days of continuous inactivity. This period is similar to the time frames several inmate calling services providers currently appear to follow, suggesting that implementation of this time frame is unlikely to cause inmate calling services providers, including those that may be small entities, undue burdens. The Commission's action lowering the maximum ancillary services fees providers may charge for single-call services and third-party financial transactions reflects a record that contains no suggestion that the lower fees will prevent inmate calling services providers, including those that may be small entities, from recovering their costs of providing those services.

Ordering Clauses

109. Pursuant to the authority contained in sections 1, 2, 4(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, 617, the Fourth Report and Order in document FCC 22–76 *is adopted.*

110. Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), the Petition for Reconsideration that NCIC Inmate Communications filed on August 27, 2021, in WC Docket No. 12–375, *is dismissed as moot* to the extent stated in document FCC 22–76.

Congressional Review Act

111. The Commission sent a copy of document FCC 22–76 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

112. Document FCC 22–76 contains modified information collection requirements, which are not effective until approval is obtained from the Office of Management and Budget (OMB). As part of its continuing effort to reduce paperwork burdens, the Commission will invite the general public to comment on the information collection requirements as required by the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will publish a separate document in the **Federal Register** announcing approval of the information collection requirements. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might ''further reduce the information burden for small business concerns with fewer than 25 employees.'' 86 FR 40416, July 28, 2021.

List of Subjects in 47 CFR Part 64

Communications common carriers, Individuals with disabilities, Prisoners, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Regulations

For the reasons set forth above, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

■ 2. The authority citation for subpart F continues to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), 616, and 620.

■ 3. Amend § 64.601 by:
■ a. Redesignating paragraphs (a)(11) through (54) as paragraphs (a)(12) through (55);
■ b. Adding new paragraph (a)(11); and
■ c. Revising newly redesignated paragraph (a)(35).

The addition and revision read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(11) *Carceral point-to-point video service.* A point-to-point video service that enables incarcerated people to engage in real-time direct video communication in ASL with another ASL speaker.

* * * * *

(35) *Qualified Direct Video Entity.* An individual or entity that is approved by the Commission for access to the TRS Numbering Database that is engaged in:

(i) Direct video customer support and that is the end-user customer that has been assigned a telephone number used for direct video customer support calls or is the designee of such entity; or

(ii) Carceral point-to-point video service as that term is defined in this section.

* * * * *

■ 4. Amend § 64.604 by revising paragraph (a)(3)(i) and adding paragraph (a)(3)(ix) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) * * *

(3) * * *

(i) Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services, except that the number and duration of calls to or from incarcerated persons may be limited in accordance with a correctional authority's generally applicable policies regarding telephone calling by incarcerated persons.

* * * * *

(ix) This paragraph (a)(3) does not require that TRS providers serving incarcerated persons allow types of calls or calling features that are not permitted for hearing people incarcerated in the correctional facility being served.

* * * * *

■ 5. Amend § 64.611 by adding paragraph (k) to read as follows:

§ 64.611 Internet-based TRS registration.

* * * * *

(k) *Registration for use of TRS in correctional facilities*—(1) *Individual user registration.* (i) through (iii) [Reserved]

(iv) *Dial-around calls for VRS.* VRS providers shall not allow dial-around calls by incarcerated persons.

(2) *Enterprise user registration for VRS.* Notwithstanding the other provisions of this section, for the purpose of providing VRS to incarcerated individuals under enterprise registration, pursuant to paragraph (a)(6) of this section, a TRS provider may assign to a correctional authority a pool of telephone numbers that may be used interchangeably with any videophone or other user device made available for the use of VRS in correctional facilities overseen by such authority. For the purpose of such enterprise registration, the address of the organization specified pursuant to paragraph (a)(6)(iii) of this section may be the main or administrative address of the correctional authority, and a Registered Location need not be provided.

■ 6. Delayed indefinitely, further amend § 64.611 by adding paragraphs (k)(1)(i) through (iii) to read as follows:

§ 64.611 Internet-based TRS registration.

* * * * *

(k) * * *

(1) * * *—

(i) *Registration information and documentation.* If an individual eligible to use TRS registers with an internet-based TRS provider while incarcerated, the provider shall collect and transmit to the TRS User Registration Database the information and documentation required by the applicable provisions of this section, except that:

(A) The residential address specified for such incarcerated person shall be the name of the correctional authority with custody of that person along with the main or administrative address of such authority;

(B) A Registered Location need not be provided; and

(C) If an incarcerated person has no Social Security number or Tribal Identification number, an identification number assigned by the correctional authority along with the facility identification number, if there is one, may be provided in lieu of the last four digits of a Social Security number or a Tribal Identification number.

(ii) *Verification of VRS and IP CTS registration data.* An incarcerated person's identity and address may be verified pursuant to § 64.615(a)(6), for purposes of VRS or IP CTS registration, based on documentation, such as a letter or statement, provided by an official of a correctional authority that states the name of the person; the person's identification number assigned by the correctional authority; the name of the correctional authority; and the address of the correctional facility. The VRS or IP CTS provider shall transmit such documentation to the TRS User Registration Database administrator.

(iii) *Release or transfer of incarcerated person.* Upon release (or transfer to a different correctional authority) of an incarcerated person who has registered for VRS or IP CTS, the VRS or IP CTS provider with which such person has registered shall update the person's registration information within 30 days after such release or transfer. Such updated information shall include, in the case of release, the individual's full residential address and (if required by this section or part 9 of this chapter) Registered Location, and in the case of transfer, shall include the information required by paragraph (k)(1)(ii) of this section.

* * * * *

■ 7. Amend § 64.613 by:

■ a. Revising paragraphs (a)(2), (c) heading, (c)(1)(v), (c)(3)(ii), and (c)(5)(ii);

■ b. Redesignating paragraphs (c)(5)(iii) through (v) as paragraphs (c)(5)(iv) through (vi);

■ c. Adding new paragraph (c)(5)(iii); and

■ d. Revising paragraphs (c)(6) and (c)(7)(iii) and (iv).

The addition and revisions read as follows:

§ 64.613 Numbering directory for Internet-based TRS users.

(a) * * *

(2) For each record associated with a geographically appropriate NANP telephone number for a registered VRS user, enterprise videophone, public videophone, direct video customer support center, carceral point-to-point video service, or hearing point-to-point video user, the URI shall contain a server domain name or the IP address of the user's device. For each record associated with an IP Relay user's geographically appropriate NANP telephone number, the URI shall contain the user's user name and domain name that can be subsequently resolved to reach the user.

* * * * *

(c) *Direct video customer support and carceral point-to-point video service*—

(1) * * *

(v) Certification that the applicant's description of service meets the definition of direct video customer support or carceral point-to-point video service and that the information provided is accurate and complete.

* * * * *

(3) * * *

(ii) Automatically if one year elapses with no call-routing queries received regarding any of the Qualified Direct Video Entity's NANP telephone numbers for direct video customer support; or

* * * * *

(5) * * *

(ii) Being able to make point-to-point calls to any VRS user in accordance with all interoperability standards applicable to VRS providers, including, but not limited to, the relevant technical standards specified in § 64.621(b);

(iii) For direct video customer support being able to receive point-to-point or VRS calls from any VRS user in accordance with all interoperability standards applicable to VRS providers, including, but not limited to, the relevant technical standards specified in § 64.621(b);

* * * * *

(6) *Call transfer capability.* A Qualified Direct Video Entity engaged in direct video customer support shall ensure that each customer support center is able to initiate a call transfer that converts a point-to-point video call into a VRS call, in the event that a VRS user communicating with a direct video customer agent needs to be transferred to a hearing person while the call is in progress. Each VRS provider shall be capable of activating an effective call transfer procedure within 60 days after receiving a request to do so from a Qualified Direct Video Entity engaged in direct video customer support.

(7) * * *

(iii) The name of the correctional facility or end-user customer support center (if different from the Qualified Direct Video Entity);

(iv) Contact information for the correction facility or end-user customer support call center(s); and

* * * * *

Subpart FF—Inmate Calling Services

■ 8. Amend § 64.6000 by revising paragraphs (m)(3) and (r) and adding paragraphs (y) and (z) to read as follows:

§ 64.6000 Definitions.

* * * * *

(m) * * *

(3) Post-conviction and awaiting transfer to another facility. The term also includes city, county, or regional facilities that have contracted with a private company to manage day-to-day operations; privately owned and operated facilities primarily engaged in housing city, county or regional Inmates; facilities used to detain individuals, operated directly by the Federal Bureau of Prisons or U.S. Immigration and Customs Enforcement, or pursuant to a contract with those agencies; juvenile detention centers; and secure mental health facilities.

* * * * *

(r) *Prison* means a facility operated by a territorial, state, or Federal agency that is used primarily to confine individuals convicted of felonies and sentenced to terms in excess of one year. The term also includes public and private facilities that provide outsource housing to other agencies such as the State Departments of Correction and the Federal Bureau of Prisons; and facilities that would otherwise fall under the definition of a Jail but in which the majority of inmates are post-conviction and are committed to confinement for sentences of longer than one year.

* * * * *

(y) *Controlling Judicial* or *Administrative Mandate* means:

(1) A final court order requiring an incarcerated person to pay restitution;

(2) A fine imposed as part of a criminal sentence;

(3) A fee imposed in connection with a criminal conviction; or

(4) A final court or administrative agency order adjudicating a valid contract between the provider and the account holder, entered into prior to September 30, 2022, that allows or requires that an Inmate Calling Services Provider act in a manner that would otherwise violate § 64.6130.

(z) *Jurisdiction* means:

(1) The state, city, county, or territory where a law enforcement authority is operating or contracting for the operation of a Correctional Facility; or

(2) The United States for a Correctional Facility operated by or under the contracting authority of a Federal law enforcement agency.

■ 9. Amend § 64.6020 by revising the section heading and paragraphs (b)(2) and (5) to read as follows:

§ 64.6020 Ancillary Service Charges.

* * * * *

(b) * * *

(2) For Single-Call and Related Services—when the transaction is paid for through an automated payment system, $3.00 per transaction, plus the effective, per-minute rate; or when the transaction is paid via a live agent, $5.95 per transaction, plus the effective, per-minute rate;

* * * * *

(5) For Third-Party Financial Transaction Fees—when the transaction is paid through an automated payment system, $3.00 per transaction; or when the transaction is paid via a live agent, $5.95 per transaction.

■ 10. Revise § 64.6040 to read as follows:

§ 64.6040 Communications access for incarcerated people with communication disabilities.

(a) A Provider shall provide incarcerated people access to TRS and related communication services as described in this section, except where the correctional authority overseeing a facility prohibits such access.

(b)(1) A Provider shall provide access for incarcerated people with communication disabilities to Traditional (TTY-Based) TRS and STS.

(2) Beginning January 1, 2024, a Provider serving a correctional facility in any jurisdiction with an Average Daily Population of 50 or more incarcerated persons shall:

(i) Where broadband internet access service is available, provide access to any form of TRS (in addition to Traditional TRS and STS) that is eligible for TRS Fund support (except that a Provider need not provide access to *non-internet Protocol* Captioned Telephone Service in any facility where it provides access to IP CTS); and

(ii) Where broadband internet access service is available, provide access to a point-to-point video service, as defined in § 64.601(a)(33), that allows communication in American Sign Language (ASL) with other ASL users; and

(iii) Where broadband internet access service is not available, provide access to *non-internet Protocol* Captioned Telephone Service, in addition to Traditional TRS and STS.

(c) [Reserved]

(d)(1) Except as provided in this paragraph (d), no Provider shall levy or collect any charge or fee on or from any party to a TRS call to or from an incarcerated person, or any charge for the use of a device or transmission service when used to access TRS from a Correctional Facility.

(2) When providing access to IP CTS or CTS, a Provider may assess a charge for such IP CTS or CTS call that does not exceed the charge levied or collected by the Provider for a voice telephone call of the same duration, distance, Jurisdiction, and time-of-day placed to or from an individual incarcerated at the same Correctional Facility.

(3) When providing access to a point-to-point video service, as defined in § 64.601(a)(33), for incarcerated individuals with communication disabilities who can use ASL, the total charges or fees that a Provider levies on or collects from any party to such point-to-point video call, including any charge for the use of a device or transmission service, shall not exceed the charge levied or collected by the Provider for a voice telephone call of the same duration, distance, Jurisdiction, and time-of-day placed to or from an individual incarcerated at the same Correctional Facility.

(4) No Provider shall levy or collect any charge in excess of 25 percent of the applicable per-minute rate for TTY-to-TTY calls when such calls are associated with Inmate Calling Services.

■ 11. Delayed indefinitely, further amend § 64.6040 by adding paragraph (c) to read as follows:

§ 64.6040 Communications access for incarcerated people with communication disabilities.

* * * * *

(c) As part of its obligation to provide access to TRS, a Provider shall:

(1) Make all necessary contractual and technical arrangements to ensure that, consistent with the security needs of a Correctional Facility, incarcerated individuals eligible to use TRS can access at least one certified Provider of each form of TRS required by this section;

(2) Work with correctional authorities, equipment vendors, and TRS providers to ensure that screen-equipped communications devices such as tablets, smartphones, or videophones are available to incarcerated people who need to use TRS for effective communication, and all necessary TRS provider software applications are included, with any adjustments needed to meet the security needs of the institution, provide compatibility with institutional communication systems, and allow operability over the Inmate Calling Services Provider's network;

(3) Provide any assistance needed by TRS providers in collecting the registration information and documentation required by § 64.611 from incarcerated users and correctional authorities; and

(4) When an incarcerated person who has individually registered to use VRS, IP Relay, or IP CTS is released from incarceration or transferred to another correctional authority, notify the TRS provider(s) with which the incarcerated person has registered.

* * * * *

■ 12. Delayed indefinitely, amend § 64.6060 by revising paragraphs (a)(5), (6), and (7) to read as follows:

§ 64.6060 Annual reporting and certification requirement.

(a) * * *

(5) For each facility served, the kinds of TRS that may be accessed from the facility;

(6) For each facility served, the number of calls completed during the reporting period in each of the following categories:

(i) TTY-to-TTY calls;

(ii) Point-to-point video calls placed or received by ASL users as those terms are defined in § 64.601(a); and

(iii) TRS calls, broken down by each form of TRS that can be accessed from the facility; and

(7) For each facility served, the number of complaints that the reporting Provider received in each of the categories set forth in paragraph (a)(6) of this section.

* * * * *

■ 13. Add § 64.6130 to read as follows:

§ 64.6130 Interim protections of consumer funds in inactive accounts.

(a) All funds deposited into a debit calling or prepaid calling account that can be used to pay for interstate or

international Inmate Calling Services or associated ancillary services shall remain the property of the account holder unless or until the funds are either:

(1) Used to pay for products or services purchased by the account holder or the incarcerated person for whose benefit the account was established;

(2) Disposed of in accordance with a Controlling Judicial or Administrative Mandate; or

(3) Disposed of in accordance with applicable state law requirements, including, but not limited to, requirements governing unclaimed property.

(b) No provider may seize or otherwise dispose of unused funds in a debit calling or prepaid calling account until at least 180 calendar days of continuous account inactivity has passed, or at the end of any alternative period set by state law, except as provided in paragraph (a) of this section or through a refund to the customer.

(c) The 180-day period, or alternative period set by state law, must be continuous. Any of the following actions by the account holder or the incarcerated person for whose benefit the account was established ends the period of inactivity and restarts the 180-day period:

(1) Depositing, crediting, or otherwise adding funds to an account;

(2) Withdrawing, spending, debiting, transferring, or otherwise removing funds from an account; or

(3) Expressing an interest in retaining, receiving, or transferring the funds in an account, or otherwise attempting to exert or exerting ownership or control over the account or the funds held within the account.

(d) After 180 days of continuous account inactivity have passed, or at the end of any alternative period set by state law, the provider must make reasonable efforts to refund the balance in the account to the account holder.

(e) If a provider's reasonable efforts to refund the balance of the account fail, the provider must treat the remaining funds in accordance with applicable state consumer protection law requirements concerning unclaimed funds or the disposition of such funds.

[FR Doc. 2022–25192 Filed 12–8–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 211101–0222; RTID 0648–XC572]

Fisheries of the Atlantic; Atlantic Migratory Group Cobia; 2022 Commercial Closure for Atlantic Migratory Group Cobia

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements a closure in Federal waters off Georgia through New York for Atlantic migratory group cobia (Atlantic cobia) that are harvested and sold (commercial). Commercial landings of Atlantic cobia are projected to reach the commercial quota on December 16, 2022. Therefore, NMFS closes the commercial sector for Atlantic cobia in Federal waters from December 16, 2022, until the start of the next fishing year on January 1, 2023. This closure is necessary to protect the Atlantic cobia resource.

DATES: This temporary rule is effective at 12:01 a.m. eastern time on December 16, 2022, until 12:01 a.m. eastern time on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *frank.helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for Atlantic cobia in Federal waters is managed under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) by regulations at 50 CFR part 697.

Separate migratory groups of cobia are managed in the Gulf of Mexico and Atlantic. Atlantic cobia is managed from Georgia through New York (50 CFR 697.2(a)). The southern boundary for Atlantic cobia is a line that extends due east of the Florida and Georgia state border at 30°42′45.6″ N latitude. The northern boundary for Atlantic cobia is the jurisdictional boundary between the Mid-Atlantic and New England Fishery Management Councils, as specified in 50 CFR 600.105(a). The fishing year for Atlantic cobia is January 1 through December 31 (50 CFR 697.28(a)).

Amendment 31 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region and the implementing final rule removed Atlantic cobia from Federal management under the Magnuson-Stevens Fishery Conservation and Management Act, while also implementing comparable regulations in Federal waters under the Atlantic Coastal Act (84 FR 4733, February 19, 2019).

The Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 1 to the Interstate FMP for Atlantic Cobia in 2019 and Addendum 1 to Amendment 1 in 2020. Amendment 1 and Addendum 1 provided for an increase in the commercial quota and transferred quota monitoring responsibility to the ASMFC. NMFS subsequently issued comparable regulations for Amendment 1 and Addendum 1 on November 8, 2021 (86 FR 61714, November 8, 2021). That final rule increased the commercial quota to 73,116 lb (33,165 kg) and transferred quota monitoring responsibility from NMFS to the ASMFC (50 CFR 697.28(f)(1)). Additionally as described in that final rule, during the fishing year, if the ASMFC estimates that the sum of commercial landings (cobia that are sold), reaches or is projected to reach the commercial quota, then the ASMFC will notify NMFS of the need for a commercial closure of Atlantic Federal waters for Atlantic cobia (50 CFR 697.28(f)(1)).

Atlantic cobia are unique among federally managed species in the U.S. southeast region, because no commercial permit is required to harvest and sell them, and so the distinction between the commercial and recreational sectors is not as clear as with other federally managed species. However, for purposes of this temporary rule, Atlantic cobia that are harvested and sold are considered commercially caught, and those that are harvested and not sold are considered recreationally caught.

On November 16, 2022, the ASMFC notified NMFS that commercial landings information indicates that the commercial quota is estimated to be met by December 16, 2022. Accordingly, the ASMFC requested that NMFS close commercial harvest of Atlantic cobia in Atlantic Federal waters on December 16, 2022, to prevent the commercial quota from being exceeded.

Regulations for the commercial sector of Atlantic cobia at 50 CFR 697.28(f)(1) require that NMFS file a notification with the Office of the Federal Register to prohibit the harvest, sale, trade, barter, or purchase of Atlantic cobia for the remainder of the fishing year when commercial landings reach or are projected to reach the commercial quota