

FACT SHEET*

**Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act;
Rates for Interstate Inmate Calling Services**

Notice of Proposed Rulemaking and Order – WC Docket Nos. 23-62 and 12-375

Background: Nearly twenty years ago Martha Wright-Reed and her fellow petitioners first sought Commission relief from the exorbitant telephone rates they had to pay to talk to their incarcerated loved ones. On January 5, 2023, President Biden signed into law the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Act), which expands the Commission’s authority over rates charged for incarcerated people’s communications services. The Martha Wright-Reed Act directs the Commission to adopt just and reasonable rates and charges for incarcerated people’s audio and video communications services not earlier than 18 months and not later than 24 months after the date of its enactment. To that end, the Commission will consider a *Notice of Proposed Rulemaking and Order*, which begins the process of implementing the Martha-Wright Reed Act.

What the Notice of Proposed Rulemaking Would Do:

- The *Notice of Proposed Rulemaking* would invite comment on how the Commission should interpret and implement the Martha Wright-Reed Act, including seeking comment on:
 - The expansion of the Commission’s authority over incarcerated people’s communications services to include advanced communications services (including audio and video services) and intrastate services;
 - The meaning of “just and reasonable” in the context of the Act’s other provisions;
 - The appropriate rate-making approach given the Commission’s authority to compute just and reasonable rates;
 - The safety and security costs necessary for incarcerated people’s communications services; and
 - The Commission’s ability to ensure that incarcerated people’s communications services are accessible to and usable by people with communication disabilities.

What the Order Would Do:

- The *Order* would reaffirm the Commission’s prior delegation of data collection authority to the Wireline Competition Bureau and the Office of Economics and Analytics and direct staff to initiate a collection of provider data to inform the Commission’s responsibilities to implement the requirements of the Martha Wright-Reed Act.

* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or to its staff, including by email, must be filed in WC Docket Nos. 23-62 and 12-375, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Incarcerated People’s Communications Services;) WC Docket No. 23-62
Implementation of the Martha Wright-Reed Act)
Rates for Interstate Inmate Calling Services) WC Docket No. 12-375

NOTICE OF PROPOSED RULEMAKING AND ORDER*

Adopted: []

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Comment Date: 30 days after publication in the Federal Register
Reply Comment Date: 60 days after publication in the Federal Register

By the Commission:

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* This document has been circulated for tentative consideration by the Commission at its March open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairwoman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

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I. INTRODUCTION

1. Nearly twenty years have passed since Martha Wright-Reed and her fellow petitioners first sought Commission relief from the exorbitant telephone rates they had to pay to talk to their incarcerated family members. More than a decade has passed since the Commission began to respond to those petitioners’ request and embarked on a process to pursue just and reasonable rates for telephone calls between incarcerated people and their loved ones.¹ The Commission’s ability to achieve that objective, however, was limited by statutory provisions,² as explained by the United States Court of Appeals for the District of Columbia Circuit in *GTL v. FCC*.³ Recently, Congress, through the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act), addressed these limitations and significantly expanded the Commission’s jurisdiction over incarcerated people’s communications services.⁴ In response to the D.C. Circuit’s decision, and recognizing the increasing role of advanced communications, including video, in connecting incarcerated people with their families and friends, Congress now expressly directs that the Commission “ensure just and reasonable charges for telephone and advanced communications services in correctional and detention facilities.”⁵

2. In this item, we build on the Commission’s efforts to date, bolstered by the new tools Congress has bestowed, and begin the process of implementing the Martha Wright-Reed Act to adopt just and reasonable rates and charges for incarcerated people’s audio and video communications services.⁶ We seek comment on how we should interpret the Act’s language to ensure that we implement the statute in a manner that fulfills Congress’s intent. We also seek comment on how the Act affects our ability to ensure that such services and associated equipment are accessible to and usable by incarcerated people with disabilities. Relatedly, we reaffirm the Commission’s prior delegation of data collection authority to the Wireline Competition Bureau and the Office of Economics and Analytics and direct them to update and restructure their most recent data collection as appropriate in light of the requirements of the new statute, so that we may meet our statutory obligation to ensure that the rates and charges for communications services between incarcerated people and their friends and families are just and

¹ See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519, 9523-25, 9527-30, paras. 12-15, 22-25, 28 (2021) (*2021 ICS Order* or *2021 ICS Notice*).

² 47 U.S.C. §§ 152(b), 201(b), 276(b)(1)(A) (1996).

³ *Global Tel*Link v. FCC*, 866 F.3d 397 (D.C. Cir. 2017) (*GTL v. FCC*) (amending 859 F.3d 39 (D.C. Cir. 2017)); see *2021 ICS Order*, 36 FCC Rcd at 9525-27, paras. 16-21.

⁴ Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (Martha Wright-Reed Act or the Act); 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d).

⁵ Martha Wright-Reed Act pmb.; 168 Cong. Rec. H10027-28 (daily ed. Dec. 22, 2022) (statements of Reps. Pallone and Rush) (referencing the *GTL v. FCC* decision that the Commission lacked authority over intrastate rates).

⁶ This item continues ongoing efforts to reform providers’ rates, charges, and practices in connection with interstate and international inmate calling services. See, e.g., *2021 ICS Order*, 36 FCC Rcd 9519; *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, FCC 22-76 (Sept. 30, 2022) (*2022 ICS Order* or *2022 ICS Notice*). At the same time, this item initiates a new docket, WC Docket No. 23-62, to specifically address implementation of, and changes required by, the provisions of the Martha Wright-Reed Act.

reasonable.

II. BACKGROUND

A. The Martha Wright-Reed Just and Reasonable Communications Act of 2022

3. On January 5, 2023, President Biden signed into law the Martha Wright-Reed Act.⁷ The Act was the product of efforts by multiple individuals and committed stakeholders over a number of years to comprehensively address the persistent problem of unreasonably high rates and charges incarcerated people and their families pay for communications services. At its core, the Act removes the principal statutory limitations that have prevented the Commission from setting comprehensive and effective just and reasonable rates for incarcerated people’s communications services.

4. Specifically, the Martha Wright-Reed Act modifies section 276 of the Communications Act of 1934 (Communications Act)⁸ to explicitly enable the Commission to require that rates for incarcerated people’s communications services be just and reasonable, irrespective of the “calling device” used.⁹ It also expands the definition of payphone service in correctional institutions to encompass all advanced communications services (other than electronic messaging), including “any audio or video communications service used by inmates . . . regardless of technology used.”¹⁰ In addition, the new statute amends section 2(b) of the Communications Act to make clear that the Commission’s jurisdiction extends to intrastate as well as interstate and international communications services used by incarcerated people.¹¹ And, in direct response to the *GTL v. FCC* decision, the Act expressly allows the Commission to “use industry-wide average costs,” as well as the “average costs of service of a communications service provider” in setting just and reasonable rates.¹² The Martha Wright-Reed Act also requires that the Commission “shall consider,” as part of its ratemaking, “costs associated with any safety and security measures necessary to provide” telephone service and advanced communications services.¹³ Finally, the statute directs the Commission to promulgate regulations necessary to implement the statutory provisions not earlier than 18 months and not later than 24 months after the date of its enactment.¹⁴

B. History of Proceeding to Date

5. In 2003, Martha Wright and her fellow petitioners, then-current and former incarcerated people and their relatives and legal counsel (collectively, the Wright Petitioners) filed petitions seeking a rulemaking to address “excessive” rates for incarcerated people’s telephone services.¹⁵ The Wright Petitioners filed an alternative petition in 2007, in which they emphasized the urgent need for the Commission to act on “exorbitant” rates for calling services for incarcerated people.¹⁶ In 2012, the

⁷ Martha Wright-Reed Act.

⁸ 47 U.S.C. § 151 *et seq.*

⁹ Martha Wright-Reed Act § 2(a).

¹⁰ *Id.* § 2(a)(2), (b).

¹¹ *Id.* § 2(c).

¹² *Id.* § 3(b); *see also* *GTL v. FCC*, 866 F.3d at 414-15.

¹³ Martha Wright-Reed Act § 3(b)(2).

¹⁴ *Id.* § 3(a).

¹⁵ Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking by Martha Wright et al., CC Docket No. 96-128, at 1 (filed Nov. 3, 2003). The petition sought to prohibit “exclusive inmate calling service agreements contracts and collect call-only restrictions” in correctional facilities. *Id.* at 3. Ms. Wright-Reed went on to lead a campaign for just communications for incarcerated people for over a decade. She passed away in 2015, before fully realizing her dream.

¹⁶ Petitioners’ Alternative Rulemaking Proposal by Martha Wright et al., CC Docket No. 96-128, at 2 (filed Feb. 28, 2007). In the alternative petition for rulemaking, the Wright Petitioners proposed benchmark rates for interstate

(continued....)

Commission commenced a rulemaking proceeding, releasing the *2012 ICS Notice* seeking comment on the Wright Petitioners' petitions and on establishing rate caps for interstate calling services for incarcerated people.¹⁷ In the *2013 ICS Order* that followed, the Commission adopted interim interstate rate caps and adopted the Commission's first mandatory data collection regarding inmate calling services (ICS), requiring all providers of those services to submit data on their underlying costs of service.¹⁸ It also adopted an annual reporting obligation requiring providers to provide specific information on their operations, including their rates and ancillary service charges.¹⁹ In 2015, in light of record evidence of continued "egregiously high" rates, the Commission adopted a comprehensive framework for regulating rates and charges for both interstate and intrastate calling services for incarcerated people, re-adopting the interim interstate rate caps, and extending them to intrastate calls.²⁰ As part of that framework, the Commission concluded that site commissions—payments made by inmate calling providers to correctional facilities or state authorities—were not costs reasonably related to the provision of inmate calling services and thus excluded those payments from the cost data used to set the rate caps.²¹

6. Several parties appealed the Commission's *2015 ICS Order*, as well as a subsequent Commission Order on Reconsideration. The D.C. Circuit addressed the appeal of the *2015 ICS Order* in its 2017 decision in *GTL v. FCC*, holding that the Commission lacked statutory authority to regulate

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long distance inmate calling services calls and reiterated their request that providers offer debit calling as an alternative option to collect calling. *Id.* at 5, 10.

¹⁷ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16629, 16629-30, 16636, paras. 1, 17 (2012) (*2012 ICS Notice*). Unless specifically noted, references herein to "interstate" include both interstate and international communications services.

¹⁸ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (2013) (*2013 ICS Order*). Prior to the effective date of the *2013 ICS Order*, the D.C. Circuit stayed some of the rules adopted but allowed other aspects of the decision to take effect, including the interim interstate rate caps and Mandatory Data Collection. See *Securus Techs v. FCC*, No. 13-1280 (D.C. Cir. Jan. 13, 2014).

¹⁹ *2013 ICS Order*, 28 FCC Rcd at 14169, para. 116; see also *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12891-92, paras. 266-67 (2015) (*2015 ICS Order*); 47 CFR § 64.6060.

²⁰ *2015 ICS Order*, 30 FCC Rcd at 12838-39, paras. 144-45. The Commission used industry-wide average costs based on data from the First Mandatory Data Collection, explaining that this approach would allow providers to "recover average costs at each and every tier." *Id.* at 12790, para. 52 & n.170. The Commission readopted the interim interstate rate caps it had adopted in 2013 and extended them to intrastate calls, pending the effectiveness of the new rate caps. *Id.* at 12769, 12771, paras. 9, 11. The Commission also adopted a Second Mandatory Data Collection to enable it to identify trends in the market and adopt further reforms. *Id.* at 12862, para. 198. In 2016, the Commission continued its reform of the inmate calling services marketplace by, among other things, amending its rate caps to better allow inmate calling service providers to recover costs incurred as a result of providing such services, including certain correctional facility costs that the Commission found, based on the record then before it, were reasonably and directly related to the provision of inmate calling services. See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order on Reconsideration, 31 FCC Rcd 9300, 9307-08, paras. 12, 15 (2016) (*2016 Order on Reconsideration*).

²¹ *2015 ICS Order*, 30 FCC Rcd at 12819, para. 118. The Commission's rules define "Site Commissions" to mean "any form of monetary payment, in-kind payment, gift, exchange of services or goods, fee, technology allowance, or product that a Provider of Inmate Calling Services or affiliate of a Provider of Inmate Calling Services may pay, give, donate, or otherwise provide to an entity that operates a correctional institution, an entity with which the Provider of Inmate Calling Services enters into an agreement to provide Inmate Calling Services, a governmental agency that oversees a correctional facility, the city, county, or state where a facility is located, or an agent of any such facility." 47 CFR § 64.6000(t).

intrastate rates and vacating the intrastate rate caps adopted in the *2015 ICS Order*.²² The Court also ruled that the Commission’s use of industry-wide average costs to set its interstate rate caps “lack[ed] justification in the record and [was] not supported by reasoned decisionmaking” in the *Order*,²³ and it vacated a reporting requirement related to video visitation services, finding the requirement was “too attenuated to the Commission’s statutory authority.”²⁴ Finally, the Court concluded that the “Commission’s categorical exclusion of site commissions from the calculus used to set [inmate calling services] rate caps defie[d] reasoned decision making because site commissions obviously are costs of doing business incurred by [inmate calling services] providers.”²⁵ The Court directed the Commission to “assess on remand which portions of site commissions might be directly related to the provision of [inmate calling services] and therefore legitimate, and which are not.”²⁶

7. Subsequently, the Commission sought comment on additional steps to address unreasonable rates in the *2020 ICS Notice*,²⁷ and released the comprehensive *2021 ICS Order*,²⁸ in which, among other actions, it reformed the treatment of site commissions, set new interim interstate rate caps for prisons and jails with average daily populations of 1,000 or more incarcerated people, and capped international calling rates for the first time.²⁹

8. In the *2021 ICS Order*, the Commission also sought to improve the data it collected on calling services for incarcerated people as part of its efforts to set reasonable permanent rate caps. It delegated authority to the Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) to establish a Third Mandatory Data Collection to collect uniform cost data to use in setting rate caps that more closely reflect inmate service providers’ costs of providing service at correctional facilities.³⁰ After seeking public comment,³¹ in January 2022, WCB and OEA released an Order adopting the data collection.³² Parties’ responses to the Third Mandatory Data Collection were due June 30, 2022, and we affirmatively incorporate those responses into the record in this proceeding.

²² *GTL v. FCC*, 866 F.3d at 402, 412.

²³ *Id.* at 402.

²⁴ *Id.* at 414-15.

²⁵ *Id.* at 413.

²⁶ *Id.* at 414. In view of the its decision in *GTL*, the D.C. Circuit separately dismissed the separate appeal of the Commission’s *2016 Order on Reconsideration* and vacated the Order on Reconsideration, “insofar as it purport[ed] to set rate caps on inmate calling service,” with the consent of all parties to that appeal. *Securus Techs., Inc. v. FCC*, No. 16-1321 (D.C. Cir. Dec. 21, 2017) (per curiam).

²⁷ See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485 (2020) (*2020 ICS Order* or *2020 ICS Notice*). The Commission proposed to lower the interstate rate caps on an interim basis, and to cap international rates. *Id.* at 8509, paras. 67-68.

²⁸ *2021 ICS Order*, 36 FCC Rcd 9519. In the *2021 ICS Notice*, the Commission sought comment on, among other matters, the methodology to be employed in setting permanent interstate and international rate caps. *Id.* at 9521, para. 5.

²⁹ *Id.* at 9530, para. 28.

³⁰ *Id.* at 9619-20, para. 221. As indicated above, the Commission conducted two prior mandatory data collections seeking this type of uniform cost data. *Supra* note 20.

³¹ *WCB and OEA Seek Comment on Upcoming Third Mandatory Data Collection for Inmate Calling Services*, WC Docket No. 12-375, Public Notice, DA 21-1192 (WCB/OEA Sept. 22, 2021).

³² *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, DA 22-52 (WCB/OEA Jan. 18, 2022). In September 2022, the Commission sought comment on how to use inmate calling services providers’ responses to establish “reasonable, permanent caps on rates and ancillary service charges for interstate and international calling services for incarcerated people.” *2022 ICS Notice* at 52, para. 125.

9. Finally, in September 2022, while analyzing the data from the Third Mandatory Data Collection, the Commission issued the *2022 ICS Order*, which adopted requirements to improve access to communications services for incarcerated people with communication disabilities and targeted reforms to lessen the financial burden on incarcerated people and their loved ones when using calling services.³³ We also issued the *2022 ICS Notice* seeking additional stakeholder input and evidence relating to additional reforms concerning incarcerated people with communication disabilities and providers' rates, charges, and practices in connection with interstate and international calling services.

III. NOTICE OF PROPOSED RULEMAKING

10. The ability to communicate through affordable audio and video communications is essential to allowing incarcerated people to stay connected to their family and loved ones, clergy, counsel, and other critical support systems. Studies consistently show that incarcerated people who have regular contact with family members are more likely to succeed after release and have lower recidivism rates.³⁴ We interpret the Martha Wright-Reed Act as providing us with the authority we need to ensure that the charges associated with communications services for incarcerated people are just and reasonable and do not create an unnecessary deterrent to their ability to stay connected with the world outside their correctional facilities. We invite comment on this interpretation.

11. As a threshold matter, we interpret the Martha Wright-Reed Act, taken as a whole, as enhancing and supplementing the Commission's existing jurisdiction, and effectively addressing the constraints imposed by the D.C. Circuit's interpretation of the Commission's jurisdiction in *GTL v. FCC*, and seek comment on this interpretation. Specifically, we interpret the statute as expanding our existing jurisdiction over communications services for incarcerated people as specified in the technical amendments and implementation sections of the law.³⁵ In our view, through this Act, Congress effectively granted the Commission broad, plenary authority over the rates and charges for "any [inmate] audio or video communications service."³⁶ We propose to read the Act, in the context of the *GTL* decision and its aftermath, as removing any limitations on the Commission's authority over incarcerated people's audio and video communications services and empowering us to prohibit unreasonably high rates and charges for, and in connection with, all such services, including intrastate services.³⁷ We seek comment on this interpretation. To the extent that parties have a more limited view of our authority or suggest that we must make additional jurisdictional findings, we ask that they describe in detail those limits and additional findings. We further seek comment on the ultimate goal of Congress in passing the

³³ *2022 ICS Order* at 3, paras. 3-4 (discussing adopted reforms).

³⁴ See, e.g., *2021 ICS Order*, 36 FCC Rcd at 9534-35, paras. 34-37 (discussing the impact of high calling rates on consumers and society).

³⁵ The Martha Wright-Reed Act does not contain language limiting our pre-existing authority over international services. As a result, our authority over international services remains intact and will now include all incarcerated people's international communications services covered by the statute.

³⁶ Martha Wright-Reed Act § 2(b)(3).

³⁷ The Commission has historically used the term "inmate calling services" or "ICS" when referencing payphone service in the incarceration context. We will now use the term "incarcerated people's communications services" or "IPCS" instead of "inmate calling services" or "ICS" to refer to the broader range of communications services subject to the Commission's jurisdiction as a result of the Act. In connection with this change in terminology, we are also changing references to "inmates" to "incarcerated people" at the request of public interest advocates. See Letter from Cheryl A. Leanza, Policy Advisor, United Church of Christ, Office of Communication Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1-2 (filed July 29, 2020) (United Church of Christ July 29, 2020 *Ex Parte* Letter) (urging the Commission to "eliminate the term 'inmate,'" explaining that "[m]any incarcerated people and advocates view the term 'inmate' as dehumanizing and disparaging"). We seek comment on codifying this updated terminology in the Notice below. See *infra* para. 78. To avoid confusion, however, when discussing the Commission's prior actions or current rules in this item, we may continue to use the terms "inmate calling services" or "ICS."

Martha Wright-Reed Act, described in the legislative history as legislation that “will help reduce financial burdens that prevent [incarcerated] people from being able to communicate with loved ones and friends.”³⁸

12. We encourage all parties to comment on the issues raised in this Notice, and specifically invite previous participants in this proceeding to update their prior submissions to reflect changed circumstances stemming from the passage of the Martha Wright-Reed Act. We thus seek renewed comment on all the issues raised in our prior Notices in light of the statutory amendments contained in the Martha Wright-Reed Act.³⁹ Parties are invited to append, amend, or otherwise include filings previously submitted in WC Docket No. 12-375 in response to this Notice.

A. The Martha Wright-Reed Act: Technical Amendments

1. Section 2(a)—Amendments to Section 276(b)(1)(A) of the Act

a. Purpose and Scope of Amendments Taken as a Whole

13. As part of our effort to fulfill Congress’s directives in the Martha Wright-Reed Act, we seek comment on the effect of the amendments Congress made to the authority granted to the Commission in section 276(b)(1)(A) of the Communications Act.⁴⁰ Do commenters agree that, taken as a whole, these amendments fundamentally expand the scope of our authority pursuant to sections 2(b) and 276 and effectively moot the concerns the D.C. Circuit raised about the Commission’s jurisdiction in *GTL v. FCC*?⁴¹

14. Prior to the enactment of the Martha Wright-Reed Act, section 276(b)(1)(A) focused on requiring that service providers be “fairly compensated” for “each and every” completed call.⁴² Congress has now eliminated the “each and every” call language and added a new dimension to section 276 of the Communications Act by requiring the Commission to “establish a compensation plan to ensure that . . . all rates and charges” for incarcerated people’s communications services “are just and reasonable.”⁴³ We seek comment on whether the amendments to section 276(b)(1)(A) change the central focus of the section from ensuring that payphone service providers are “fairly compensated” for voice calls with little, if any, “considerations of fairness to the consumer,”⁴⁴ to a more balanced approach emphasizing consumers’ (particularly incarcerated people’s) and providers’ right to just and reasonable rates and charges for each audio and video communications service now encompassed within the statutory definition of “payphone service.”⁴⁵ How should we balance these interests going forward? Does the addition of “just and

³⁸ 168 Cong. Rec. H10027 (daily ed. Dec. 22, 2022) (statement of Rep. Pallone).

³⁹ See, e.g., *2021 ICS Notice*, 36 FCC Rcd 9519; *2022 ICS Notice*.

⁴⁰ 47 U.S.C. § 276(b)(1)(A); Martha Wright-Reed Act § 2(a)(1).

⁴¹ *GTL v. FCC*, 866 F.3d at 402 (holding that the Commission’s proposed rate caps on intrastate rates exceeded its authority).

⁴² 47 U.S.C. § 276(b)(1)(A) (2021); see, e.g., *2021 ICS Order*, 36 FCC Rcd at 9600, para. 185 (discussing the requirements of section 276(b)(1)(A)); see also *GTL v. FCC*, 866 F.3d at 409 (finding “unfounded” the Commission’s assertion that “the interests of both the payphone service providers and the parties paying the compensation must be taken into account” in determining whether payphone providers are fairly compensated) (quoting *2015 ICS Order*, 30 FCC Rcd at 12814 n.335).

⁴³ 47 U.S.C. § 276(b)(1)(A).

⁴⁴ *GTL v. FCC*, 866 F.3d at 409.

⁴⁵ See 47 U.S.C. § 153(1) (defining “advanced communications services”); *id.* § 276(d) (defining “payphone service” to include “the provision of inmate telephone service and advanced communications services described in sub-paragraphs (A), (B), (D), and (E) of section 3(1) in correctional institutions, and any ancillary services”); see also *id.* § 153(25), (27), (36) (respectively defining “interconnected VoIP service,” “interoperable video conferencing service,” and “non-interconnected VoIP service”).

reasonable” inform the meaning of “fair compensation?”⁴⁶ If not, what are we to make of Congress’ apparent emphasis on affordability for consumers?⁴⁷ In this regard, we seek comment, generally, on the relationship between the requirement that providers be “fairly compensated” and the requirement that their rates and charges be “just and reasonable.”⁴⁸

15. Relatedly, we seek comment on Congress’s intent in striking the “per call” and “each and every [call]” language from section 276(b)(1)(A), particularly the effect of these changes to the “fairly compensated” requirement in the context of communications services for incarcerated people under this new Act. As originally conceived, the “fairly compensated” requirement of section 276(b)(1)(A) was designed to fix the specific problem of uncompensated payphone calls at that time.⁴⁹ But the situation is quite different in the context of communications services for incarcerated people. Providers generally receive compensation for the calls they carry through the per-minute rates charged to consumers of calling services for incarcerated people.⁵⁰ No other entity receives compensation for calls other than through a contractual arrangement with the provider.⁵¹ It is therefore difficult to discern what the “fairly compensated” requirement adds to the “just and reasonable” requirement in the context of

⁴⁶ See, e.g., *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1502 (D.C. Cir. 1984) (pointing out that historically, rates had been seen as just and reasonable when they fell “within a ‘zone of reasonableness,’ where rates are neither ‘less than compensatory’ [for providers] nor ‘excessive’ [for consumers]”) (quoting Supreme Court decisions) (internal citations omitted).

⁴⁷ See, e.g., Martha Wright-Reed Act pmb. (characterizing the legislation as requiring the Commission to “ensure just and reasonable charges for telephone and advanced communications services in correctional and detention facilities”); 168 Cong. Rec. H10027 (daily ed. Dec. 22, 2022) (statement of Rep. Latta) (explaining that the bill “would require the Federal Communications Commission to ensure that charges for payphone services, including advanced communications services in correctional institutions, are just and reasonable”); *id.* H10027 (daily ed. Dec. 22, 2022) (statement of Rep. Jackson Lee) (“We have heard over and over again how exorbitant the cost is for grandmothers, mothers and fathers, and sisters and brothers to keep connections to individuals”); *id.* H10028 (daily ed. Dec. 22, 2022) (statement of Rep. Rush) (“The bill ends the practice of phone companies charging families astronomically high rates to call incarcerated loved ones in prison. These rates are unjust and unreasonable, and I am elated that this bill will finally put an end to them.”).

⁴⁸ See 47 U.S.C. § 276(b)(1)(A).

⁴⁹ When originally enacted, the “fairly compensated” requirement was premised, at least in part, on the fact that payphone providers were “largely uncompensated” for certain types of calls, including “dial-around” calls in which a caller “makes a long distance call using a long distance carrier other than the payphone’s presubscribed long distance carrier.” See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545, 2548, paras. 3-4 (1999); see also *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Notice of Proposed Rulemaking, 11 FCC Rcd 6716, 6721, 6725, paras. 8, 15-16 (1996) (*1996 Pay Telephone Notice*) (explaining that some payphone providers “do not receive any revenue directly from [interLATA operator-service] calls,” and proposing to use the “fairly compensated” mandate to “prescribe compensation only when payphone providers are not already ‘fairly compensated’”). Against this backdrop and considering the prior requirement of section 276(b)(1)(A) to ensure fair compensation for “each and every” completed call, the Commission concluded in 1996 that it should ensure that “all calls are fairly compensated, including those for which the [payphone service provider] currently receives no revenue.” *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al.*, CC Docket No. 96-128 et al., Report and Order, 11 FCC Rcd 20541, 20566, para. 48 (1996).

⁵⁰ See, e.g., 47 CFR § 64.6030 (specifying interim rate caps for calling services for incarcerated people).

⁵¹ See, e.g., *1996 Pay Telephone Notice*, 11 FCC Rcd at 6721, paras. 7-8 (discussing payphone provider compensation arrangements).

communications services for incarcerated people, especially given the historical backdrop underlying this provision.⁵²

16. We interpret the elimination of the “per call” and “each and every [call]” language from section 276 as a signal of Congress’s intent to restrict the application of the “fairly compensated” requirement with respect to communications services for incarcerated people by no longer requiring the Commission to ensure that its compensation plan allows for “fair” compensation for “each and every” completed call. We seek comment on this interpretation. This interpretation appears to be consistent with Congress’s decision to allow the Commission to set rates based on average costs.⁵³ Do commenters agree that the Commission is no longer required to ensure that providers are “fairly compensated” for *every* call they carry or facilitate? Does elimination of the “per call” language give the Commission additional flexibility to consider rates or rate caps that apply to units other than minutes? What independent meaning does the “fairly compensated” requirement have for communications services for incarcerated people in light of the other provisions of the Martha Wright-Reed Act, including the newly-added requirement to ensure “just and reasonable” rates and charges? For example, does the “fairly compensated” requirement circumscribe the Commission’s analysis of “just and reasonable” rates?⁵⁴ Does it require the Commission to ensure that providers are able to recover their costs of providing incarcerated people’s communications services, at least on average, even if not on a per-call basis? Does the fair compensation requirement affect the Commission’s analysis of other issues related to incarcerated people’s communications services, such as the payment of site commissions or the imposition of ancillary service charges? We seek comment on these questions.

b. Addition of “Other Calling Devices”

17. The Martha Wright-Reed Act extends our authority over communications services to include not just incarcerated people’s audio and video communications using traditional payphones, but also their communications using “other calling device[s].”⁵⁵ Given the absence of additional qualifying language in the new statute, we propose to interpret “other calling device[s]” broadly to encompass all devices that incarcerated people either use presently or may use in the future to communicate with individuals not confined within the incarcerated person’s correctional institution. Under this proposed

⁵² Prior to the enactment of the Martha Wright-Reed Act, the Commission treated the requirement that providers be “fairly compensated for each and every completed . . . call” in section 276(b)(1)(A) as supplementing the “just and reasonable” standard in section 201(b) in the context of audio calling services for incarcerated people, even though section 276(b)(1)(A) was designed to solve a problem affecting the payphone market that no longer applied to the market for communications services for incarcerated people. *See, e.g., 2021 ICS Order*, 36 FCC Rcd at 9530, para. 28 (framing calling services reforms as balancing the need to ensure that incarcerated people and their families “obtain essential communications capability at just and reasonable rates” and “remain[ing] faithful to [the Commission’s] obligations under section 276 of the Act”). Thus, the Commission reasoned that “fair compensation” in the context of audio calling services for incarcerated people “does not mean that each and every completed call must make the same contribution to a provider’s indirect costs. Nor does it mean a provider is entitled to recover the total ‘cost’ it claims it incurs in connection with each and every separate inmate calling services call.” *Id.*, 36 FCC Rcd at 9602, para. 189. Instead, the Commission found compensation to be fair “if the price for each service or group of services ‘recovers at least its incremental costs, and no one service . . . recovers more than its stand-alone cost.’” *Id.* at 9602, para. 189 (quoting *Implementation of Pay Telephone Reclassification & Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248, 3255-56, para. 18 (2002)).

⁵³ Martha Wright-Reed Act § 3(b)(1).

⁵⁴ As the Supreme Court has held, “[r]ates which enable [a] company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate investors for the risk assumed certainly cannot be condemned as invalid, even though they might produce only a meager return on the so called ‘fair value’ rate base.” *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 605 (1944) (*Hope Natural Gas*).

⁵⁵ Martha Wright-Reed Act § 2(a)(1); 47 U.S.C. § 276(b)(1)(A).

interpretation, “other calling device[s]” would encompass all wireline and wireless phones, computers, tablets, and other communications equipment capable of sending or receiving the audio or video communications described in section 276(d), regardless of transmission format. That interpretation also would encompass all wireline and wireless equipment, whether audio, video, or both, that incarcerated people with disabilities presently use to communicate, through any payphone service, with the non-incarcerated, including but not limited to videophones, captioned telephones, and peripheral devices for accessibility, such as braille display readers, screen readers, and TTYs.⁵⁶ Our interpretation would also encompass other potential devices, not yet in use, to the extent incarcerated people use them in the future to communicate with people not confined within the incarcerated person’s correctional institution. We seek comment on this proposal. Are there any additional devices that should be included within “other calling device[s]”? Conversely, are there any devices that are excluded from our jurisdiction? If so, what is the statutory basis for concluding that Congress intended to exclude audio or video communications using those devices from our jurisdiction?

c. Addition of “Just and Reasonable” Language

18. We next seek comment on the Martha Wright-Reed Act’s addition to section 276(b)(1)(A) requiring that the Commission “establish a compensation plan to ensure that . . . all rates and charges” for incarcerated people’s communications services be “just and reasonable.”⁵⁷ This language mirrors the “just and reasonable” language in section 201(b) of the Communications Act and other federal statutes, which has a long interpretive history.⁵⁸

19. *Just and Reasonable.* The “traditional regulatory notion of the ‘just and reasonable’ rate was aimed at navigating the straits between gouging utility customers and confiscating utility property.”⁵⁹ Setting “just and reasonable” rates therefore “involves a balancing of the investor and the consumer interests.”⁶⁰ Given the parallel between the “just and reasonable” language in section 276(b)(1)(A) and the same language in section 201(b) and other federal statutes, we propose to interpret “just and reasonable” in section 276(b)(1)(A) to have the same meaning given to that term in section 201(b) and relevant precedent interpreting that standard in the ratemaking context.⁶¹ We seek comment on this proposal. To the extent commenters disagree, how should we understand the “just and reasonable” requirement in section 276(b)(1)(A) and how would we distinguish between the “just and reasonable” requirement in section 276(b)(1)(A) and the “just and reasonable” requirement in section 201(b) if they are not the same?

⁵⁶ Where a person with a disability must use a peripheral device to access an advanced communications service or device, that service or device is required to be compatible with such peripheral devices, unless that is not achievable. 47 U.S.C. § 617(c); 47 CFR § 14.20(a)(3).

⁵⁷ See Martha Wright-Reed Act § 2(a)(1)(B); 47 U.S.C. § 276(b)(1)(A).

⁵⁸ Section 201(b) of the Communications Act requires that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign communication by wire or radio] shall be just and reasonable.” 47 U.S.C. § 201(b).

⁵⁹ See, e.g., *Verizon Commc’ns., Inc. v. FCC*, 535 U.S. 467, 481 (2002).

⁶⁰ *Hope Natural Gas*, 320 U.S. at 603; see also *NAACP v. FPC*, 425 U.S. 662, 666-69 (1976) (holding that the Federal Power Commission’s statutory authority to “establish ‘just and reasonable’ rates” gave the agency “ample authority” to prevent a regulatee from charging consumers for “unnecessary or illegitimate costs” that the regulatee might incur through “racially discriminatory employment practices”).

⁶¹ See, e.g., *2021 ICS Order*, 36 FCC Rcd at 9575-76, 9587, paras. 126, 128-29, 153 (citing and discussing precedent supporting the Commission’s implementation, in the context of audio calling services for incarcerated people, of the “just and reasonable” standard in section 201(b)).

20. We also seek comment on how the “just and reasonable” standard in section 276(b)(1)(A) relates to the issue of site commission payments.⁶² How should section 276(b)(1)(A)’s requirement that rates for communications services for incarcerated people be “just and reasonable” affect our treatment of site commission payments? In implementing the “just and reasonable” requirement in section 201(b), the Commission traditionally relies on the “used and useful” framework to separate costs and expenses that may be recovered through rates from those that may not.⁶³

21. Under the “used and useful” framework, the determination of “just and reasonable” rates focuses on affording the regulated entity an opportunity to “recover[] prudently incurred investments and expenses that are ‘used and useful’ in the provision of the regulated service for which rates are being set.”⁶⁴ That framework, which “is rooted in American legal theory and particularly in the constitutional limitations on the taking of private property for public use,”⁶⁵ balances the “equitable principle that public utilities must be compensated for the use of their property in providing service to the public” with the “[e]qually central . . . equitable principle that the ratepayers may not fairly be forced to pay a return except on investment which can be shown directly to benefit them.”⁶⁶ In applying these principles, “the Commission considers whether the investment or expense ‘promotes customer benefits, or is primarily for the benefit of the carrier.’”⁶⁷ Should we apply the “used and useful” ratemaking concept as a limiting factor in considering the costs and expenses allowable in the rates for communications services for incarcerated people? Why or why not? If not, what principle or framework should we use in evaluating “just and reasonable” rates and charges under section 276(b)(1)(A) and why would any such principle or framework be preferable to the well-established framework the Commission routinely uses when implementing identical language in section 201(b)?

22. We invite comment on how we should apply the “used and useful” concept, or any alternative principle or framework commenters suggest, to providers’ site commission payments. The Commission has previously sought broad comment on the ratemaking treatment of those payments,

⁶² See 47 CFR § 64.6000(t) (defining “Site Commission”).

⁶³ See, e.g., *Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 577, 580, para. 7 (2019) (*Sandwich Isles Reconsideration Order*) (explaining that the ‘used and useful’ standard “provides the foundation for Commission decisions evaluating whether particular investments and expenses are reasonable” under section 201(b)).

⁶⁴ *2021 ICS Order*, 36 FCC Rcd at 9575, para. 126 (citing Commission precedent).

⁶⁵ *American Tel. and Tel. Co.*, Docket No. 19129, Phase II Final Decision and Order, 64 F.C.C.2d 1, 47, para. 111 (1977) (*AT&T Phase II Order*).

⁶⁶ *Id.* at 47, paras. 111-12.

⁶⁷ *2021 ICS Order*, 36 FCC Rcd at 9575, para. 126 (quoting *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Notice of Proposed Rulemaking, 22 FCC Rcd 17989, 17997, para. 19 n.47 (2007)). There are several elements of the Commission’s used and useful analysis. First, the Commission considers the need to compensate providers “for the use of their property and expenses incurred in providing the regulated service.” *Sandwich Isles Reconsideration Order*, 34 FCC Rcd at 580, para. 7 (citing *AT&T Phase II Order*, 64 F.C.C.2d at 47, para. 111). Second, the Commission looks to the “equitable principle that ratepayers should not be forced to pay a return except on investments that can be shown to benefit them.” *Id.* In this regard, the Commission considers “whether the expense was necessary to the provision of interstate telecommunications services.” *Id.* And third, the Commission considers “whether a carrier’s investments and expenses were prudent (rather than excessive).” *Id.* (citing *AT&T Communications Revisions to Tariff F.C.C. Nos. 1, 2, 11, 13, and 14 Applications for Review*, CC Docket No. 87-611, Memorandum Opinion and Order, 5 FCC Rcd 5693, 5695, para. 17 (1990)). Though the Commission has identified these “general principles regarding what constitutes ‘used and useful,’” it “has recognized ‘that these guidelines are general and subject to modification, addition, or deletion. The particular facts of each case must be ascertained in order to determine what part of a utility’s investment is used and useful.’” *Sandwich Isles Communications, Inc.*, WC Docket No. 09-133, Declaratory Ruling, 25 FCC Rcd 13647, 13652, para. 12 (WCB 2010) (quoting *AT&T Phase II Order*, 64 F.C.C.2d at 48, para. 115).

including on whether it is appropriate to permit providers to recover any portion of their site commission payments from end users through calling services rates⁶⁸ and on whether it “should preempt state and local laws that impose these payments on interstate and international” inmate calling services.⁶⁹ We incorporate our prior questions on site commissions into this Notice,⁷⁰ and request that commenters address each of them in relation to each incarcerated people’s communications service now subject to our ratemaking authority. Should our ratemaking calculations include providers’ site commission payments only to the extent, if any, that they compensate facilities for used and useful costs that the facilities themselves incur? Why or why not? And if we take that approach, how should we determine the facilities’ used and useful costs? Should we make generalized findings as to what used and useful costs facilities typically incur and allow each facility to show through the waiver process that its costs exceed the typical amount? Or should we instead allow those costs only to the extent an individual facility establishes the extent to which it incurs used and useful costs?

23. *Rates and Charges.* We next seek comment on what constitutes the “rates and charges” mentioned in the amendments to section 276(b)(1)(A). We propose to interpret “rates” to refer to the amounts paid by consumers of incarcerated people’s communications services for calls or other audio or video communications covered by the statute or our rules.⁷¹ And we propose to interpret “charges” to refer to all other amounts assessed on consumers of incarcerated people’s communications services in connection with those services. These would include ancillary service charges, authorized fees, mandatory taxes and fees, and any other charges a provider may seek to impose on consumers of communications services for incarcerated people. These interpretations are consistent with the Commission’s rules, which currently carve out ancillary service charges, authorized fees, and mandatory taxes and fees as separate from our rate caps.⁷² Do commenters agree with our proposed interpretations of these terms? If not, what alternative interpretations do commenters propose and what is the justification for these alternative interpretations?

24. *Compensation Plan.* We also propose finding that setting industry-wide rate caps or rate caps applying to groups of providers, as opposed to separate rates for individual providers, would be sufficient to “establish a compensation plan,” as required by the Act.⁷³ We note that setting industry-wide rate caps for incarcerated people’s communications services would be consistent with the Commission’s previous rules regulating rates for these services.⁷⁴ Do commenters agree that mandatory rate caps would constitute a “compensation plan” within the meaning of section 276(b)(1)(A)? Are there other rate regimes that the Commission should consider that are consistent with—or required by—section 276(b)(1)(A)? If so, what are they and how do they square with the statutory language and Congress’s intent?

25. Our current rate caps for inmate calling services limit the amount providers may charge any individual consumer for any particular call. Other forms of rate cap regulation allow providers to

⁶⁸ 2021 ICS Notice, 36 FCC Rcd at 9661, paras. 313-14.

⁶⁹ *Id.* at 9661, para. 315.

⁷⁰ *Id.* at 9659-66, paras. 311-24.

⁷¹ 47 CFR § 64.6030 (setting forth interim rate caps for communications services for incarcerated people). Under the Commission’s rules the term “Consumer” means “the party paying a Provider of Inmate Calling Services.” *Id.* § 64.6000(e).

⁷² See 47 CFR §§ 64.6000(a)-(b), (n), 64.6020, 64.6070.

⁷³ 47 U.S.C. § 276(b)(1)(A). These rate caps could potentially vary based on facility size “or other characteristics.” See *infra* Section III.B.4 (discussing section 3(b)(2) of the Martha Wright-Reed Act).

⁷⁴ See, e.g., 2013 ICS Order, 28 FCC Rcd at 14111, para. 5 (setting interim rate caps); 2015 ICS Order, 30 FCC Rcd at 12769, para. 9 (adopting tiered rate caps); 2021 ICS Order, 36 FCC Rcd at 9520-21, para. 2 (adopting interim rate caps for prisons and jails with 1,000 or more incarcerated people).

charge different amounts for particular services as long as the total charges (weighted by demand) for all services do not exceed an overall cap,⁷⁵ or specify that the providers' total revenues must not exceed a specified revenue cap. We seek comment on whether a regime that constrains rates and ancillary service charges collectively across all service categories (e.g., audio communications services and video communications services) and allows providers to set different rates and charges for the various different services (e.g., lower rates and charges for audio communications services and higher rates and charges for video communications services or vice versa) would constitute a "compensation plan" sufficient to ensure just and reasonable rates, as required by the Act. Commenters should address how such a regime would protect individual consumers against unreasonably high rates. Would sub-caps on rates and charges for different services within each service category be needed and, if so, how should they be structured?

26. We seek comment on whether section 276(b)(1)(A)'s mandate that we "establish a compensation plan to ensure that . . . all rates and charges" for incarcerated people's communications services be "just and reasonable" extends to ensuring that the providers' practices, classifications, and regulations for or in connection with those services are just and reasonable. Specifically, does Congress's reference to a "compensation plan" in section 276(b)(1)(A) allow—or require—that we go beyond simply "determining just and reasonable rates," as set forth in section 3(b) of the Martha Wright-Reed Act, and ensure that providers implement those rates justly and reasonably? We ask for detailed comment on this area, including on the extent of our section 276(b)(1)(A) authority, if any, to address providers' practices, classifications, and regulations, as well as any limitations on that authority. What other authority, if any, do we have to address the practices, classifications, and regulations for or in connection incarcerated people's communications services?

27. We also ask how our authority to address unjust and unreasonable "practices, classifications, and regulations" under section 201(b) of the Communications Act should affect our treatment of practices, classifications, and regulations for or in connection with incarcerated people's communications services. The Commission has previously recognized that where it "has jurisdiction under section 201(b) . . . to regulate 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."⁷⁶ Given the provisions of the Martha Wright-Reed Act granting us authority over intrastate communications services and advanced communications services generally in the incarceration context,⁷⁷ we ask whether we may similarly extend our section 201(b) authority to regulate practices, classifications, and regulations for or in connection with incarcerated people's intrastate communications services that were previously subject to state regulation and video services that were unregulated prior to the enactment of the Act. Can providers practicably separate incarcerated people's communications services into interstate and intrastate, or regulated and nonregulated, components?

2. Section 2(b)—Amendments to Section 3(1) of the Communications Act

28. Prior to the enactment of the Martha Wright-Reed Act, our authority under section 276 was limited to "payphone service," a term then defined as "the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary

⁷⁵ Our price cap rules for rate of return local exchange carriers establish this type of rate cap regime. See 47 CFR pt. 69.

⁷⁶ 2020 ICS Order, 35 FCC Rcd at 8496, para. 31 (citing *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22413, para. 17 (2004)); see also *Pub. Serv. Comm'n of Md. v. FCC*, 909 F.2d 1510, 1515 (D.C. Cir. 1990); *Illinois Bell Tel. Co. v. FCC*, 883 F.2d 104, 113 (D.C. Cir. 1989).

⁷⁷ Martha Wright-Reed Act §§ 2(a)-(c) (amending 47 U.S.C. §§ 153(1), 152(b), 276(b)(1)(A), (d)).

services.”⁷⁸ The new Act expands our authority over services in correctional institutions under section 276 to include “advanced communications services,” as defined in sections 3(1)(A), (B), (D), and new (E) of the Communications Act.⁷⁹ Those provisions of section 3(1), in turn, define “advanced communications services” as including (1) “interconnected VoIP service,” (2) “non-interconnected VoIP service,” (3) “interoperable video conferencing service,” and (4) “any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.”⁸⁰ Apart from the restriction to communications with individuals “outside the correctional institution” in section 3(1)(E), and the exclusion of “electronic messaging service” from the revised definition of “payphone service,”⁸¹ the language in the new statute appears to confer on the Commission broad jurisdiction to develop a compensation plan for the categories of audio and video communications now included in the definition of “payphone services” and includes no other limitation except for a limitation to communications “by wire and radio” arising from sections 1 and 2(a) of the Communications Act.⁸² We seek comment on this unequivocal expansion of our statutory authority under section 276, including how each of the first three types of “advanced communications services” provides additional statutory authority under section 276 beyond what is added by new subsection 3(1)(E) and how each type applies to communications services for incarcerated people.

29. The Martha Wright-Reed Act extends our ratemaking authority to “interoperable video conferencing service” by including sub-paragraph 3(1)(D) of the Communications Act in the definition of “payphone service” in section 276(d) of that Act.⁸³ The Communications Act defines “interoperable video conferencing service” as “a service that provides real-time video communications, including audio, to enable users to share information of the user’s choosing.”⁸⁴ We seek comment on which video services

⁷⁸ 47 U.S.C. § 276(d) (1996).

⁷⁹ Martha Wright-Reed Act § 2(a)(2); 47 U.S.C. § 153(1)(A)-(B), (D)-(E).

⁸⁰ 47 U.S.C. §§ 153(1)(A)-(B), (D)-(E), 276(d). The Communications Act’s definitions of “interconnected VoIP service,” “interoperable video conferencing service,” and “non-interconnected VoIP service” are set forth in 47 U.S.C. §§ 153(25), (27), and (36), respectively.

⁸¹ The Communications Act defines “electronic messaging service” as “a service that provides real-time or near real-time non-voice messages in text form between individuals over communications networks.” 47 U.S.C. § 153(19). “Electronic messaging services” include “services such as e-mail, short message service (SMS) text messaging, and instant messaging.” *See, e.g., Consumer and Governmental Affairs Bureau Seeks Comment on Tentative Findings for the 2022 Twenty-First Century Communications and Video Accessibility Act Biennial Report*, CG Docket No. 10-213, Public Notice, DA 22-661, at 2, para. 7 (CGB June 22, 2022). In connection with text messaging, the Commission has recognized that “the content that can be sent by wireless messaging is not limited to mere text. In particular, [multimedia messaging service] is an extension of the SMS protocol and can deliver a variety of media, and enables users to send pictures, videos, and attachments over wireless messaging channels.” *Petitions for Declaratory Ruling on Regulatory Status of Wireless Messaging Service*, WT Docket No. 08-7, Declaratory Ruling, 33 FCC Rcd 12075, 12078, para. 8 (2018). “Electronic messaging service” is nonetheless included in the definition of “advanced communications services,” and is required to be accessible to and usable by people with disabilities under section 716 of the Act. *See, e.g., 47 U.S.C §§ 710, 716.*

⁸² 47 U.S.C. §§ 151, 152(a).

⁸³ Martha Wright-Reed Act § 2(a)(2).

⁸⁴ 47 U.S.C. § 153(27). We note that the Commission has a pending proceeding seeking further comment on the kinds of services encompassed by the term “interoperable video conferencing services.” *Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Interoperable Video Conferencing Services*, CG Docket No. 10-213, Public Notice, DA 22-463, at 1 (Apr. 27, 2022) (refreshing the record on the meaning of the term “interoperable” in the context of video conferencing services and equipment). We need not resolve that proceeding before addressing the scope of video visitation and other video services presently provided to incarcerated people as “advanced communications services.”

used, or potentially used, by incarcerated people are included within this definition and whether any are excluded. Are video visitation services used by incarcerated people “interoperable video conferencing service[s]” under this statutory definition? How should we interpret the phrases “real-time video communications” and “enable users to share information of the user’s choosing” in the context of incarcerated people’s communications services? Are there types of video communications services for incarcerated people that are not real-time? If so, what are they? Would it include real-time video that is based in applications or other technologies? Additionally, given the statutory phrase “any audio or video communications . . . regardless of technology used” in new section 3(1)(E), we seek comment on how to address non-traditional audio and video communications technologies or applications that could effectively enable providers of communications services to incarcerated people to circumvent our rate-making authority. Consistent with Congressional intent, we will be vigilant in overseeing the provision of all forms of audio and video communications, and invite comment on the steps we should take to ensure that our rules adequately address all forms of audio and video communications subject to our authority.

30. We seek comment on the proper scope of the limiting phrase “used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held” as used in new section 3(1)(E) of the Communications Act. We note that phrase appears only in section 3(1)(E) and there is no language within section 3(1)(E), or elsewhere in the Communications Act or the Martha Wright-Reed Act, extending this limitation to the other categories of advanced communications services identified in section 2(a)(2) of the Martha Wright-Reed Act. More specifically, we interpret the use of the limiting phrase of new subsection 3(1)(E) as not applying to the other subsections of section 3(1) that are now referenced in section 276(d). In addition, this limiting phrase has no application to any other aspect of section (3)(1) outside the context of section 276. We invite comment on the proper scope of the limitation included in section 3(1)(E).

31. We propose to interpret the phrase “any audio or video communications service” in subsection 3(1)(E) as encompassing every method that incarcerated people may presently, or in the future, use to communicate, by wire or radio, by voice, sign language, or other audio or visual media. We seek comment on this proposal. We also seek comment on how to interpret the phrase “used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.” Does this phrase include all types of audio or video communications services—regardless of whether the communication is interstate, intrastate, or international—that an incarcerated person uses to communicate with a person not confined within the incarcerated person’s correctional institution, regardless of that person’s physical location at the time of the communication? In other words, if a calling service is typically used for communicating with family, friends, or loved ones, is that person’s physical location at the time of the call determinative, so that, for example, our authority over an incarcerated person’s calls to family members’ cell phones might cease when the family members enter the incarcerated person’s correctional institution as opposed to when they are at their homes?

32. We seek comment on the meaning of the phrase “outside the correctional institution where the inmate is held” with reference to the audio and video communications services covered by section 2(b)(3) of the Martha Wright-Reed Act. Does it refer to any physical location not subject to involuntary confinement restrictions? As we discuss below, a chief defining characteristic of correctional institutions is that they are places where people are involuntarily confined.⁸⁵ Could physical locations “outside” the correctional institution include any location not used for confinement purposes, including rooms designated for communicating with, or visitation by, persons not subject to confinement, including family, friends and members of the general public not subject to confinement? Similarly, could “individuals outside the correctional institution” refer to people who are neither confined in nor employed by the institution, even if they are temporarily located on the premises of the institution for purposes of communicating with incarcerated individuals through some form of audio or video communications

⁸⁵ See *infra* Section III.B.4 (Size and Type of Correctional Institution).

service? We invite comment on these potential interpretations. Are there additional types of communications encompassed within these statutory phrases? Conversely, are there other types of communications that fall outside those phrases? For example, should we interpret the statutory language as excluding all audio and video communications between employees of the correctional institution and incarcerated people from the definition of “payphone service” as revised by the Act?

33. Under certain of the interpretations suggested above, our newly expanded authority under section 276(b)(1)(A) could extend to onsite video visitation services (i.e., services in which video communication between persons located within the same building or site substitute for traditional in-person visitation), either because: (1) they are interoperable video conferencing services within the meaning of section 3(1)(D) or because (2) they are video services within the meaning of section 3(1)(E). In the latter case, incarcerated people would use onsite video visitation services to communicate with persons not confined in or employed by a correctional institution—and with whom the incarcerated person is only allowed to communicate via an audio or video communications service and only when they are at a location where the incarcerated person is unable to be. We seek comment on whether these interpretations of the Martha Wright-Reed Act are consistent with the language of the statute and would further the purposes of the Act. We note that on-site video visitation services are typically operated by providers of inmate calling services as currently defined in our rules, and the same services and equipment may be used by an incarcerated person regardless of whether the “visitor” is on-site, at home, or at another remote location.⁸⁶

34. We also seek comment on whether the phrase “regardless of technology used” in section 3(1)(E) of the Communications Act encompasses the technology used for video visitation, now and in the future. The record shows that some institutions are restricting or prohibiting in-person visits in favor of video visitation and a visitor may lack sufficient broadband service or equipment to enable video visitation from their home or elsewhere.⁸⁷ To the extent a service provider charges for video visitation at the facility, should those charges be subject to our ratemaking authority?

35. In light of these concerns, we seek comment on interpreting the Act broadly to achieve its stated goal of ensuring “just and reasonable charges for telephone and advanced communications services in correctional and detention facilities.”⁸⁸ Further, we seek comment on whether a broad interpretation will advance the goal of section 716 of the Communications Act to ensure that services and equipment used for advanced communications services are accessible to and usable by people with disabilities.⁸⁹ We invite comment on whether a broad interpretation would be a correct reading of section 2(b)(3) of the Martha Wright-Reed Act. Are there other onsite audio and video services that we should consider within our authority under this interpretation of the statutory language? Finally, if we interpret video communications services as including onsite video visitation, we seek comment on how the Commission can ensure that all forms of onsite video visitation services within the scope of our authority that are used to communicate with non-incarcerated people are subject to the rules we adopt to implement the Act. Are

⁸⁶ See *2021 ICS Notice*, 36 FCC Rcd at 9648-49, para. 281 (“[T]he record indicates that remote video visitation, where available, is often provided by an inmate calling service provider.”).

⁸⁷ See *Rates for Interstate Inmate Calling Services*, CG Docket No. 12-375, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 13170, 13229, para. 151 (2014) (“[T]he record shows that some correctional institutions have eliminated all in-person visitation and replaced it with video visitation.”); see also *2022 ICS Order* at 12, para. 24 (discussing the exponential demand for video visitation services since the onset of the COVID-19 pandemic); *Petition of Network Communications International Corporation for Forbearance pursuant to 47 U.S.C. § 160(c) from Application of Contribution Obligations on Inmate Calling Services; Securus Technologies, LLC, Request for Waiver of Section 54.706 of the Commission’s Rules*, WC Docket No. 19-232, Order, 35 FCC Rcd 8348, 8353, para. 16 (2020) (finding that pre-pandemic many incarcerated persons were not permitted in-person visits and already were limited to video visitations).

⁸⁸ Martha Wright-Reed Act pmb1.

⁸⁹ 47 U.S.C. § 617.

there instances where correctional institutions impose charges on video visitation or predicate its use on charges for other related or unrelated services?

3. Section 2(c)—Amendment to Section 2(b) of the Communications Act

36. The Martha Wright-Reed Act amends section 2(b) of the Communications Act, which generally acts as a limitation on the Commission’s jurisdiction over intrastate communications, as well as a rule for interpreting other provisions of the Communications Act.⁹⁰ Section 2(b) enumerates certain statutory provisions that are not subject to the generally applicable limitation on the Commission’s jurisdiction.⁹¹ When Congress enacted the Martha Wright-Reed Act, it added section 276 of the Communications Act to section 2(b)’s list of exceptions to the general limitation on the Commission’s authority over intrastate communications.⁹² This change, when coupled with the broad language in the amended section 276, suggests that Congress intended to grant the Commission authority over all intrastate communications services between incarcerated people and non-incarcerated people with whom they wish to communicate.⁹³ Do commenters agree?

37. We propose finding that, in combination, the amendments to section 276 and the addition of section 276 to the exceptions contained in section 2(b) of the Communications Act grant the Commission plenary authority over intrastate communications services provided to incarcerated people.⁹⁴ In addition, we propose finding that our expanded jurisdiction over intrastate communications extends to any communications service now covered by section 276, including the “advanced communications services” added to the definition of “payphone service.”⁹⁵ We seek comment on these proposed findings and on whether the inclusion of section 276 in the section 2(b) exemption list now provides the Commission with definitive authority to regulate all audio and video communications services covered by section 276.

B. Implementation of the Martha Wright-Reed Act

1. Approach to Ratemaking

38. Section 3(a) of the Martha Wright-Reed Act directs the Commission to “promulgate any regulations necessary to implement” that Act,⁹⁶ including its mandate that “all rates and charges” for

⁹⁰ Martha Wright-Reed Act § 2(c); 47 U.S.C. § 152(b)(1); *see La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 373 (1986) (holding that section 2(b)(1) of the Communications Act provides “not only a substantive jurisdictional limitation on the FCC’s power, but also a rule of statutory construction” in interpreting the Act’s provisions”).

⁹¹ 47 U.S.C. § 152(b)(1) (“Except as provided in [certain enumerated sections of the Act] . . . nothing in this Act shall be construed to apply or give the Commission jurisdiction” over intrastate communications services.).

⁹² Martha Wright-Reed Act § 2(c); 47 U.S.C. § 152(b)(1).

⁹³ *See, e.g.*, 168 Cong. Rec. H10028 (daily ed. Dec. 22, 2022) (statement of Rep. Rush) (explaining that the “legislation would confirm the FCC’s regulatory power to protect all prison and jail phone calls, not just those that cross state lines”); *id.* H10027 (daily ed. Dec. 22, 2022) (statement of Rep. Pallone) (stating that the bill would give the FCC authority to regulate “the rates charged for calls made between confinement facilities and people within the same State”).

⁹⁴ 47 U.S.C. §§ 152(a)-(b), 276. The Commission’s authority to adopt rules for intrastate incarcerated people’s communications service is further supported by section 276(b)(1)’s directive that the Commission adopt regulations to implement, among other things, section 276(b)(1)(A), along with the broad authority in provisions such as section 201(b) of the Communications Act, which authorizes the Commission to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.” *Id.* § 201(b).

⁹⁵ The revised definition of advanced communications services includes “any audio or video communications service used by inmates . . . regardless of technology used,” which was added to the definition of “payphone service” for purposes of section 276 of the Communications Act. Martha Wright-Reed Act § 2(a)(2) (codified at 47 U.S.C. § 153(1), 2(b)(3) (codified at 47 U.S.C. § 276(d)).

⁹⁶ Martha Wright-Reed Act § (3)(a).

completed payphone communications be “just and reasonable.”⁹⁷ Below, we seek comment on how we can best discharge this statutory mandate.

39. The Commission’s prior efforts to ensure just and reasonable rates for inmate calling services focused on capping, on an industry-wide basis, the rates and ancillary services charges providers could assess for, or in connection with, voice calls, based on providers’ costs.⁹⁸ We seek comment on whether we should follow this approach with regard to all communications services provided to incarcerated people? Should we instead set separate caps on rates and charges for different types of providers or, alternatively, for each individual provider? We ask that commenters address the relative benefits and burdens of each approach, including the potential impact on consumers, providers, and Commission resources.

40. We also seek comment on whether we should set separate rate and ancillary services rate caps for audio and video services. Do the costs of providing audio and video services vary significantly? Do the costs of ancillary services depend on whether these services are ancillary to audio or video services? Would separate caps for different services benefit incarcerated people and their families, and other consumers? Would providers incur additional costs if separate rate caps were implemented, and if so, how would these costs compare to any benefits consumers might receive from separate caps? Is there a risk that separate caps for different services could be exploited in a way that would harm consumers? What burdens, if any, would separate rates and charges impose on providers? Would it be difficult for providers to separate their costs in a meaningful way for different services for purposes of submitting the data the Commission would need to set separate rate caps? Are there any voice and video services that are, or could be, combined such that it would be burdensome to assess separate rates and charges for them? If so, what are they? Should we allow voice and video services to be offered as bundles? If so, should we require that all rates, charges, and terms and conditions of service be included in the same contract, and the rates and charges for each type of service and bundle be separately listed so as to be easily identifiable?

41. In the event we decide to set separate caps for audio and video services, should we subdivide either category into different types of services for ratemaking purposes? If so, what should those subcategories be? What types of audio and video services do providers offer? Do providers offer different audio and video services as part of a package? Do different types of audio and video services make different demands on provider resources and, if so, how should we reflect those differences in our ratemaking? If we were to set separate caps for different services, how would we decide what caps to apply to any new covered services providers may introduce in the future?

42. Assuming that the Martha Wright-Reed Act expands the Commission’s existing jurisdiction over ratemaking to include all communications services for incarcerated people, including intrastate services, the Commission must ensure that intrastate rates are also just and reasonable. In the past, the Commission did not distinguish between costs for interstate and intrastate voice services in setting rate caps for interstate inmate calling services. Rather it adopted a total industry cost approach, explaining that:

Our calculations use total industry costs, both interstate and intrastate, because the available data do not suggest that there are any differences between the costs of providing interstate and intrastate inmate calling services. Nor do such data suggest a method for separating reported costs between the intrastate and interstate jurisdictions that might capture such differences, if any. Finally, providers do not assert any such differences.⁹⁹

⁹⁷ *Id.* pmb1., § 2(a)(1)(B).

⁹⁸ *See, e.g., 2021 ICS Order*, 36 FCC Rcd at 9536-604, paras. 39-193.

⁹⁹ *2020 ICS Notice*, 35 FCC Rcd at 8513-14, para. 83.

The Commission followed this total cost approach in the *2021 ICS Order*, as detailed in the Appendices to that *Order*.¹⁰⁰ We propose to take a similar approach in implementing the Martha Wright-Reed Act and to continue to treat costs for interstate voice services and intrastate voice services as having identical per-unit costs. Do commenters agree with this approach? If not, they should address in detail how costs differ between interstate and intrastate voice services and how to measure these differences. Commenters should also address whether such differences are substantial enough to warrant different rate caps based on the jurisdiction of a voice call, taking into account the burden associated with such a separation. In the time since the *2020 ICS Notice*, have providers developed ways to separate intrastate voice costs from interstate voice costs?¹⁰¹ What burdens would be associated with such a separation process?

43. We also seek comment on whether we should take a total cost approach to video services and assume that the average costs for intrastate video communications services are identical to the average costs for interstate video communications. If parties disagree with that assumption, they should explain how costs differ based on the jurisdictional nature of video communications. Can the jurisdictional nature of video communications services even be determined or are such services inherently interstate? Parties should also address whether such differences are substantial enough to warrant different rate caps for interstate and intrastate video communications services. Is there a way for providers to separate the costs associated with interstate video services in a meaningful way from the costs associated with intrastate video services? What burdens would be associated with such a separation?

44. We invite comment on the types of pricing plans we should allow for the audio and video communications services subject to our section 276 ratemaking authority. Our rules currently prohibit providers from charging incarcerated people or their loved ones for calls on a per-call or per-connection basis and require providers to price their interstate, international, and jurisdictionally indeterminate calling services at or below specific per-minute rate caps.¹⁰² This structure results in incarcerated persons and their families paying for their interstate and international phone calls on a per-minute basis.¹⁰³ In the *2022 ICS Notice*, we sought comment on whether we should authorize pilot programs under which providers of incarcerated people's calling services could offer alternative pricing structures for voice calls, including structures under which an incarcerated person would receive a specified—or unlimited—number of monthly minutes of use for a predetermined monthly charge.¹⁰⁴ Do commenters agree that nothing in the Act precludes us from adopting alternative pricing structures for audio or video communications, should the record support this action?

45. We seek comment on whether we should require a specific pricing structure for incarcerated people's video communications services. If so, what should that structure be? Should we require that providers offer such video communications services at per-minute rates? If not, what

¹⁰⁰ *2021 ICS Order*, 36 FCC Rcd at 9542, 9544-46, paras. 54, 60-65; *e.g.*, *id.* Appx. E paras. 9, 17, 34, 36 (referencing total costs).

¹⁰¹ We note that no provider submitting data in response to the Third Mandatory Data Collection attempted to separate its interstate and intrastate costs.

¹⁰² 47 CFR § 64.6030 (setting forth the Commission's interstate and international interim rate caps); *id.* § 64.6080 (prohibiting per-call or per-connection charges); *id.* § 64.6090 (prohibiting flat-rate calling); *see also id.* § 64.6070 (limiting the taxes and governmental fees that providers may pass through to consumers). For convenience, we refer to 47 CFR §§ 64.6030, 64.6080, 64.6090 as the "pricing structure rules." Separately, our rules allow incarcerated people's communications services providers to charge consumers for any of five specified types of ancillary services charges, each subject to their own respective caps. *Id.* § 64.6020.

¹⁰³ *See generally 2021 ICS Order*, 36 FCC Rcd at 9547, para. 68 (determining that per-minute rates are preferable to per-call rates).

¹⁰⁴ *2022 ICS Notice* at 60-65, paras. 148-60.

alternative structure do commenters support, and what would the benefits and burdens be of any alternative structure? How can we best ensure that the rates for video communications services are just and reasonable? We seek broad comment on the pricing structures under which providers presently offer video services to incarcerated people and whether those structures can harm consumers or lead to unreasonably high rates. What would be the benefits or burdens of allowing providers to continue to use their current pricing structures for video communications services, either under pilot programs or on a permanent basis? Should we allow providers to use these alternative structures for audio services? If so, what conditions should we impose on providers to ensure just and reasonable rates for both incarcerated people's audio and video communications services?

2. Use of Data in Ratemaking

46. Section 3(b)(1) of the Martha Wright-Reed Act specifies that the Commission “may use industry-wide average costs of telephone service and advanced communications services” in promulgating implementing regulations and determining just and reasonable rates.¹⁰⁵ That section also specifies that the Commission may use “the average costs of service of a communications service provider” for such purposes.¹⁰⁶ In our view, these authorizations, when read in conjunction with the elimination of the requirement that providers be “fairly compensated for each and every” completed call,¹⁰⁷ respond directly to the D.C. Circuit's holding that, in the *2015 ICS Order*, the Commission had improperly used industry-wide average costs in setting interstate rate caps.¹⁰⁸ We invite comment on our view that the language of the new statutory provisions allows, but does not require, the Commission to rely on average costs—either on an industry-wide, or provider-specific basis—to set rate caps for all forms of incarcerated people's communications services.

47. We also seek comment on the meaning of “industry-wide,” as used in section 3(b)(1) of the Act. Should we interpret “industry-wide” as referring exclusively to entities that provide “any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used”?¹⁰⁹ Or should we read “industry-wide” as referring collectively to all providers of “telephone service and advanced communications services”? Alternatively, should we interpret “industry-wide” to refer only to some subset of providers of incarcerated people's communications services? Similarly, does the phrase “average costs of service of a communications service provider” refer to all communications service providers? Or only to providers of incarcerated people's communications service or even an individual provider of communications services for incarcerated people? We ask that parties explain the basis for their preferred interpretation of these statutory phrases.

48. We seek comment on the best approach to using industry-wide average costs to determine just and reasonable rates for both traditional telephone service and advanced communications services provided to incarcerated people. Are there any circumstances under which setting rates based on industry-wide average costs would result in unreasonably high, or unreasonably low, rates for any particular group of providers or consumers? If so, does the statutory language permit us to divide the relevant industry into groups based on their average costs per unit of service or specific cost-related characteristics, such as whether the provider serves facilities primarily located in rural or urban areas; and, if so, which specific cost-related characteristics should we consider? If we take that step, what additional steps should we take to discharge our obligation, under section 3(b)(2) of the Martha Wright-

¹⁰⁵ Martha Wright-Reed Act § 3(b)(1).

¹⁰⁶ *Id.*

¹⁰⁷ 47 U.S.C. § 276 (1996).

¹⁰⁸ *GTL v. FCC*, 866 F.3d at 414-15.

¹⁰⁹ Martha Wright-Reed Act § 2(b)(3).

Reed Act, to “consider . . . differences in the [average costs of telephone service and advanced communications services] by small, medium, or large facilities.”¹¹⁰

49. We also seek comment on how we might use “the average costs of service of a communications service provider” to set just and reasonable rates.¹¹¹ Would this statutory language allow us to use the average costs of an efficient (i.e., least cost) provider holding quality and provided services constant, or group of efficient providers, to set industry-wide rates or to set rates for a subset of the industry?¹¹² Does any commenter view the statutory language as allowing—or even requiring—us to set rates for each provider based on that provider’s average costs of service? Assuming we have the flexibility to adopt rate caps on an industry-wide or individual-provider basis, which approach would best allow us to ensure that rates and charges are just and reasonable? Additionally, we seek comment on whether using average costs of service to set rates for smaller subsets of the industry would raise any confidentiality concerns and whether those concerns might be outweighed by the public interest benefits of using average costs.

50. In the accompanying Order, we conclude that it is necessary to update and restructure the most recent data collection to ensure that rates and charges for all incarcerated people’s communications services are “just and reasonable,” and we delegate authority to WCB and OEA to implement such a data collection.¹¹³ We ask for detailed comment on how should we proceed if a particular provider, or group of providers, do not provide reliable and accurate information in response to the forthcoming data collection. We also ask how we should proceed if the submitted information does not allow us to determine with precision the costs attributable to any particular service or function, or groups of services or functions, for which WCB and OEA request data.

3. Necessary Safety and Security Costs

51. We seek comment on the directive in section 3(b)(2) of the Martha Wright-Reed Act that the Commission “shall consider costs associated with any safety and security measures necessary to provide” telephone service and advanced communications services to incarcerated people.¹¹⁴ As an initial matter, we seek comment on what “shall consider” means. How much discretion, if any, does that phrase give the Commission in evaluating safety and security costs? Is the Commission required to treat all safety and security costs identified by providers or facilities as costs recoverable through rates for communications services for incarcerated people? Could the Commission “consider” such costs, but ultimately decide to exclude all of them from its rate calculations as unnecessary? Is there a middle ground whereby the Commission could consider safety and security costs and decide to include some of those costs, but exclude others, from its rate calculations? To what extent does the Commission’s duty to consider “costs” depend on the strength or credibility of the record documenting such costs?

52. We seek comment on several aspects of the phrase “necessary safety and security measures.”¹¹⁵ How are we to understand the word “necessary” here? How does a standard of “necessary” compare to the “used and useful” standard the Commission traditionally uses in analyzing whether rates are just and reasonable rates under section 201(b)? The Commission has, in the past, interpreted

¹¹⁰ *Id.* § 3(b)(2).

¹¹¹ *Id.* § 3(b)(1).

¹¹² *Cf. GTL v. FCC*, 866 F.3d at 414-15 (taking issue with the Commission’s efficient providers approach because the sampled providers represented less than one percent of the market).

¹¹³ *See infra* Section IV.

¹¹⁴ Martha Wright-Reed Act § 3(b)(2).

¹¹⁵ *Id.* § 3(b)(2).

“necessary” as having essentially the same meaning as “used and useful.”¹¹⁶ But the D.C. Circuit has previously found that interpretation overly broad, explaining that “necessary” “must be construed in a fashion that is consistent with the ordinary and fair meaning of the word, *i.e.*, so as to limit ‘necessary’ to that which is required to achieve a desired goal.”¹¹⁷ The D.C. Circuit also observed that “courts have frequently interpreted the word ‘necessary’ to mean less than absolutely essential, and have explicitly found that a measure may be ‘necessary’ even though acceptable alternatives have not been exhausted.”¹¹⁸ How should we implement the D.C. Circuit’s guidance in this context? What is the “ordinary and fair meaning” of the word “necessary” as used in section 3(b)(2) of the Martha Wright-Reed Act? Should we interpret “necessary” in that section to mean something less than absolutely essential or indispensable? Is it something more than “used and useful”? What interpretation do commenters suggest, and why?

53. We seek detailed, specific comment on which safety and security measures are “necessary” to the provision of telephone and advanced communications services for incarcerated people and why those measures are “necessary.”¹¹⁹ Are any safety and security measures “necessary” to the provision of those services?¹²⁰ Or are such measures core features of the correctional environment, rather than features needed to adapt communications services to that environment?¹²¹

¹¹⁶ See, e.g., *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4776-77, para. 28 (1999) (interpreting “necessary” in section 251(c)(6) of the Communications Act as requiring incumbent local exchange carriers to allow “collocation of any equipment that is ‘used or useful’ for either interconnection or access to unbundled network elements, regardless of other functionalities inherent in such equipment”).

¹¹⁷ *GTE Serv. Corp. v. FCC*, 205 F.3d 416, 423 (D.C. Cir. 2000) (*GTE*) (italics in original). The Commission later revised its interpretation of “necessary” in line with *GTE*. The Commission concluded that equipment is “necessary” for purposes of interconnection or access to unbundled network elements under section 251(c)(6) if “an inability to deploy equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection or access to unbundled network elements.” *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Fourth Report and Order, 16 FCC Rcd 15435, 15441, para. 12 (2001), *aff’d sub nom. Verizon Tel. Cos. v. FCC*, 292 F.3d 903 (D.C. Cir. 2002).

¹¹⁸ *Natural Resources Defense Council, Inc. v. Thomas*, 838 F.2d 1224, 1236 (D.C. Cir. 1988) (citations omitted); see also *FTC v. Rockefeller*, 591 F.2d 182, 188 (2d Cir. 1979) (“Obviously however, the word ‘necessary’ is not always used in its most rigid sense.”).

¹¹⁹ The Commission has previously sought comment on similar issues regarding telephone service for incarcerated people. See *2021 ICS Notice*, 36 FCC Rcd at 9664-65, para. 323; *2022 ICS Notice* at 53, para. 131.

¹²⁰ See, e.g., National Sheriffs’ Association Comments, WC Docket No. 12-375, at 4 (filed Sept. 27, 2021) (characterizing security and administrative duties as “necessary” for communication services for incarcerated people); Pay Tel Communications, Inc., Reply, WC Docket No. 12-375, at 9-10 (filed Dec. 17, 2021) (arguing that certain security functions may be required for the provision of communications services for incarcerated people in certain contexts); Global Tel*Link Corporation Reply, WC Docket No. 12-375, at 8-9 (filed Dec. 17, 2021) (explaining that “security and surveillance are a core function of [inmate calling services]” and that such costs are “inextricably intertwined with the provision of” those services).

¹²¹ See, e.g., Worth Rises Comments, WC Docket No. 12-375, at 1-4 (filed Sept. 27, 2021) (arguing that security is a “core function of correctional agencies and is related to the standard operation of correctional facilities” and that “[i]n all cases, except when layered onto communication services, these security and surveillance products and services are paid for out of agencies’ operating budget[s]”); United Church of Christ et al. Comments, WC Docket No. 12-375, at 12 (filed Sept. 27, 2021) (UCC OC, Inc., Comments) (explaining that “security and surveillance are procured in the interest of correctional facilities”); National Sheriffs’ Association Reply, WC Docket No. 12-375, at 7 (filed Dec. 21, 2021) (acknowledging that the “primary duty of Sheriffs and jails is to ensure security in the facility and in the community and access to [incarcerated people’s communications services] cannot override this”). Worth Rises traces the development of safety and security services in this context, explaining that such services were historically sold to correctional facilities by “standalone security firms” separate from communications services. Worth Rises Comments at 2. Worth Rises asserts that as new providers entered the market for telecommunications services following the breakup of AT&T, these security firms “quickly began providing

(continued....)

54. Safety and security measures can cover a wide range of tasks, including, but not limited to, enrolling incarcerated people into voice biometrics systems, call monitoring, responding to alerts, blocking and unblocking numbers, and analyzing call recordings.¹²² We seek comment not only on what constitute safety and security measures, but also which of those measures, if any, are “necessary” within the meaning of the statutory language.¹²³ Commenters should identify and describe any safety and security measures they consider “necessary” to the provision of any form of communications services for incarcerated people and to explain in detail why they deem each identified service to be “necessary.” Conversely, we invite comment on why specific safety and security measures, or even broad categories of such measures, are not “necessary” to the provision of communications services for incarcerated people.

55. In addition, we invite comment on the extent to which resources (e.g., labor, tangible and intangible assets, and materials) of the provider—as opposed to the resources of carceral facilities or authorities—are used to provide any “necessary” safety and security measures. To the extent more data are required from providers regarding safety and security measures, WCB and OEA should seek to obtain those data in the forthcoming supplemental data collection.¹²⁴ We also invite comment on how we can determine the “costs associated with” any necessary safety and security measures to the extent resources of the facilities are used to provide these measures.¹²⁵ We ask for detailed comment on what steps, if any, we should take to determine those costs and on how we should proceed if we are unable to determine those costs. We also seek comment on how we should address any information we have regarding those costs in setting just and reasonable rates for communications services for incarcerated people. For example, if we determine that a particular safety or security measure is necessary to provide a covered service, would it be appropriate to include the underlying costs in rates and let the provider and facility determine how to appropriately share those costs?

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communications services to their correctional customers” and “layered their security and surveillance services on top of their new communications services and shifted their cost onto [calling services] consumers.” *Id.* at 3. Since that time, “providers have continued to expand their suite of security and surveillance services through R&D and the acquisition of other security firms, technologies, and patents.” *Id.*

¹²² See, e.g., National Sheriffs’ Association Comments at 3; Prison Policy Initiative Comments, WC Docket No. 12-375, at 18 (filed Sept. 27, 2021); Pay Tel Communications, Inc., Comments, WC Docket No. 12-375, Exh. 2 (filed Sept. 27, 2021) (Pay Tel Comments).

¹²³ Compare Inmate Calling Solutions, LLC, Comments, WC Docket No. 12-375, at 15 (filed Jan. 12, 2015) (suggesting that a “basic” telephone system only requires security for “allowing calls with simple call control: (a) identifying the inmate calling; (b) restricting who the inmate can and cannot call; (c) providing the called party with the ability to accept, reject, or block the caller; and (d) providing the facility with the ability to monitor and record the calls”), Worth Rises Comments at 12 (contending that the only relevant security services are “those required on all communications by the Communications Assistance for Law Enforcement Act”), and UCC OC, Inc., Comments at 12 (arguing that there is “no reason that the staff time of a correctional officer should be reflected in rates for phone service, and security and surveillance should not be a profit center for incarcerating institutions”), with Praeses LLC Comments, WC Docket No. 12-375, at 13 (filed Sept. 27, 2021) (arguing, broadly, that the Commission “should defer to Facilities on issues regarding the welfare and security of inmates”) and National Sheriffs’ Association Comments at 3 (explaining that “security duties include: enrollment and management of inmates into voice biometrics system; responding to [inmate calling services] system alerts; forwarding alerts and recorded calls to investigators; conducting real-time monitoring of inmate conversations; analyzing call recording of inmate conversations; burning CDs of conversations for further review by investigators; and responding to law enforcement requests and subpoenas for call detail records and recordings”).

¹²⁴ Our action today includes an Order delegating authority to the Wireline Competition Bureau and the Office of Economics and Analytics to update and restructure the existing data collection. See *infra* Section IV.

¹²⁵ See, e.g., National Sheriffs’ Association Comments 4 (suggesting that the correctional officials perform certain security and administrative tasks “in many” facilities instead of the calling services provider); Pay Tel Comments, Exh. 2 (providing a chart listing various security and administrative tasks and whether the calling services provider or the facility performs them).

56. Finally, we invite detailed comment on the relationship, if any, between safety and security measures and site commission payments. For example, to what extent do monetary site commission payments compensate correctional institutions for costs they bear in connection with “necessary” safety and security services they incur, if any, using their own resources? Do providers offer safety and security products and services at discounted rates or at no cost to correctional institutions?¹²⁶ If so, what are these products and services? Do correctional facilities instruct providers to furnish safety and security products and services on their behalf? If so, what products and services do correctional facilities typically ask providers to furnish? Do providers introduce new security and surveillance services during the contract negotiation process or at some point during the duration of a contract?¹²⁷ If so, why do they do so and what effect do such services have on end-user rates?¹²⁸ To the extent commenters argue that safety and security measures are embedded in site commission payments, to what extent, if any, do these payments serve to reimburse correctional facilities for costs they incur to ensure that the provision of communications services for incarcerated people does not pose any associated safety or security risk?¹²⁹ If so, what information do correctional facilities have documenting those costs? Do correctional facilities ever provide data regarding their safety and security costs during the contract negotiation process? We invite comment on these and any other matters that would assist the Commission in understanding the relationship between safety and security measures and site commission payments.

4. Size and Type of Correctional Institution

57. The Martha Wright-Reed Act directs that the Commission “shall consider . . . differences in the [average costs of telephone service and advanced communications services] by small, medium, or large facilities.”¹³⁰ We seek comment on certain questions raised by this language.

58. We first seek comment on the Martha Wright-Reed Act’s use of differing terms to refer to incarceration facilities, apparently interchangeably, including “correctional institutions,” “correctional facilities,” “detention facilities,” and “facilities.”¹³¹ We propose to interpret each of these statutory terms as generically and interchangeably referencing places where people are involuntarily confined. We seek comment on this proposal. We also seek comment on the meaning of the terms “detention facility” and “detention facilities,” as used in the Martha Wright-Reed Act.¹³² The statute neither defines these terms nor provides direction on how the Commission should interpret them. Neither do the Commission’s rules. Should we interpret the term “detention facilities” as having the same meaning as the

¹²⁶ Letter from Bianca Tylek, Executive Director, Worth Rises, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed Mar. 24, 2021) (Worth Rises Mar. 24, 2021 *Ex Parte*) (explaining that providers have offered “to provide security and surveillance products and services that were not requested to sweeten a bid and distract from the stated purpose of the procurement process”).

¹²⁷ *Id.* at 2 (arguing that providers have “routinely introduced new security and surveillance services,” sometimes mid-contract, and that these new services are “not associated with any increase in rates”).

¹²⁸ *Id.* (contending that new security and surveillance services become “normalized” such that “[s]ubsequent procurement processes then require or prefer these new technologies” effectively allowing providers to “perpetually introduce new security and surveillance services that they sell to correctional facilities but force incarcerated people and their families to pay for or use to justify high calling rates”).

¹²⁹ *See, e.g., id.* at 3 (suggesting that correctional officials “have claimed that the commissions they are paid are for security and surveillance costs borne by their facilities” but that this is really “meant to justify longstanding commission payments”).

¹³⁰ Martha Wright-Reed Act § 3(b)(2).

¹³¹ *Id.* pmb1., §§ 2(b)(3), 3(b)(2), 4. Similarly, the Commission’s rules use “Correctional Facility” and “Correctional Institution” interchangeably. 47 CFR § 64.6000(f) (definition of Correctional Facility or Correctional Institution).

¹³² *Id.* § 4. We note that both uses of these terms occur outside the operative portions of the statute and therefore provide guidance on the intent of Congress or context for limiting the statute’s effect on other laws.

Commission’s existing definition of “correctional institution” or “correctional facility?”¹³³ Does “detention facility” have a meaning different from jails and prisons? Are there compelling reasons to make any definitional distinctions between correctional institutions and detention facilities?

59. We also seek comment on whether the terms currently defined in our rules—“correctional facility or correctional institution”—could be used as generic terms to encompass the different terms used in the Martha Wright-Reed Act. We propose to continue to interpret these terms as applying to all portions of a correctional institution, collectively, to avoid the risk of any particular institution being divided into multiple entities of differing sizes in an effort to take advantage of whatever size-based rate tiers we may adopt as part of our rate structure for incarcerated people’s communications services.¹³⁴ We invite comment on this proposal.

60. Our current rules define “Correctional Facility or Correctional Institution” as “a jail or a prison” and then separately define “Jail” and “Prison.”¹³⁵ We propose to continue to interpret the term “Correctional Institution” to include all the facilities encompassed within the current definitions of “Prison” and “Jail.”¹³⁶ We seek comment on this proposal, as well as on whether we should expand those definitions to include other types of facilities.¹³⁷ By way of example, the Commission has previously sought comment on including “civil commitment facilities, residential facilities, group facilities, and nursing facilities in which people with disabilities, substance abuse problems, or other conditions are routinely detained” as part of the definition of “Correctional Facility.”¹³⁸ Should we include those, or any other additional facilities, in our definitions of “Jail,” “Prison,” or “Correctional Facility”?

61. The Martha Wright-Reed Act states that the Commission “shall consider . . . differences in the costs . . . by small, medium or large facilities or other characteristics,” as part of its rate-setting process.¹³⁹ We seek comment on how to interpret “small, medium, or large facilities.” What size categories should the Commission adopt to implement this language? What size thresholds should apply to each category? What metrics should we use to define size categories, and what data should we consider in setting size thresholds? We also seek comment on whether the directive to consider size differences is only relevant if the Commission uses cost-averaging in setting rates for incarcerated people’s communications services, as addressed in section 3(b)(1) of the Act. In other words, if the Commission were to base its rates on something other than industry-wide average costs, would it still be obligated to consider potential cost differences associated with serving different-sized facilities?

62. Our current rate structure distinguishes among different types and sizes of correctional institutions, establishing separate rate caps for prisons and jails, as well as separate rate tiers for different-sized jails. This seems consistent with the Martha Wright-Reed Act’s reference to “small, medium, or large facilities,” but we seek comment on whether the Act allows or requires any change in the Commission’s current approach to analyzing providers’ costs based on the type and size of correctional institution being served. Does the Martha Wright-Reed Act require us to implement more or fewer rate tiers based on type or size? We invite parties to provide information in support of any claims they may make in regard to the differences or similarities in the costs associated with serving different types or sizes of facilities. Could the Commission set the same rates for small, medium, and large facilities after considering cost differences, if any?

¹³³ See 47 CFR § 64.6000(f).

¹³⁴ See, e.g., 2015 ICS Order, 30 FCC Rcd at 12783-84, paras. 40-41.

¹³⁵ 47 CFR § 64.6000(f).

¹³⁶ *Id.* § 64.6000(m), (r).

¹³⁷ 2022 ICS Notice at 65, para. 161.

¹³⁸ *Id.*

¹³⁹ Martha Wright-Reed Act § 3(b)(2).

63. To the extent we continue to use multiple rate tiers for different-sized correctional institutions, we seek comment on our continued use of average daily population as the primary metric for measuring the size of correctional institutions. We incorporate and renew prior calls for comments on how average daily population should factor into our rate caps, if at all.¹⁴⁰ Should we adjust our current distinction between jails with average daily populations below 1,000, and jails with average daily populations at or above 1,000 based on the Act's use of the terms "small, medium, or large"? Should the Commission adopt other size thresholds to account for differing cost characteristics of different-sized correctional institutions? Are there compelling reasons to adopt a different metric for determining size other than average daily population?

64. The Martha Wright-Reed Act also directs the Commission to consider "other characteristics" besides size-based distinctions in setting rates for incarcerated people's communications services.¹⁴¹ We seek comment on what other characteristics we should consider in setting rates, including correctional institution type (whether it is a prison, jail, or other kind of institution), geographic location (whether it is in an urban, as opposed to a rural, area), and the technology used (whether it is wireline as opposed to wireless, internet protocol-based as opposed to circuit-switched, or is connected to the public switched telephone network (PSTN) as opposed to transmitted only via the Internet). How do these characteristics affect costs? Should the Commission use "other characteristics" in tandem with the size of a facility when setting new rate caps? If so, how do these characteristics impact costs? How much weight should be given to the impact of other characteristics on the underlying costs? Is the primary driver of costs for some types of calls the number of calls, minutes, bits, phones, tablets, incarcerated people, network capacity, some combination of these, or something else? How does this vary with the nature of the call, for example, whether it is connected to the PSTN or is an app-to-app call, or whether it is a video or audio call regardless of the mode of transmission? Can the Commission disregard the size of the facility if some "other characteristic" provides more compelling cost-related differences?

C. Effect on Other Laws

65. Section 4 of the Martha Wright-Reed Act states that: "[n]othing in this Act shall be construed to modify or affect any Federal, State or local law to require telephone service or advanced communications services at a State or local prison, jail, or detention facility or prohibit the implementation of any safety and security measures related to such services at such facilities."¹⁴² Below, we seek comment on the meaning and purpose of this provision. As an initial matter, we propose finding that the phrase "this Act," as used in section 4, refers specifically to the Martha Wright-Reed Act, as opposed to the Communications Act. This seems to be the most logical reading of that reference, and we seek comment on this proposed finding.

66. We next invite comment on the meaning of the language in the first clause of section 4 of the new Act providing that "[n]othing in this Act shall be construed to modify or affect any Federal, State or local law to require telephone service or advanced communications services at a State or local prison, jail, or detention facility."¹⁴³ We seek comment on how we should interpret this language as a general matter. Does the language of this clause simply mean that the Martha Wright-Reed Act does not create any new obligation for state or local facilities to provide any form of incarcerated people's calling services?¹⁴⁴ Does the language carry any different or additional meanings? Should we interpret "to require" in this context as referring to all Federal, State, and local laws that affirmatively mandate the

¹⁴⁰ See, e.g., 2021 ICS Notice, 36 FCC Rcd at 9658-59, paras. 306-10.

¹⁴¹ Martha Wright-Reed Act § 3(b)(2).

¹⁴² *Id.* § 4.

¹⁴³ Martha Wright-Reed Act § 4.

¹⁴⁴ For example, if a federal law requires provision of a particular form of disability access in prisons, jails, or detention facilities, this clause would not modify or affect that federal law.

provision of telephone service or advanced communications services? Are there other possible meanings of the phrase in this provision? We observe that the statute uses the phrase “to require,” as opposed to “to provide,” or “to offer.” What is the significance of the choice of the word “require” in section 4? We invite comment about any of the other language in this clause and about the interplay between this language and any of the proposals contained in this Notice.

67. We also seek comment on how we should interpret the second clause of section 4, which specifies that nothing in the Act shall “prohibit the implementation of any safety and security measures related to such services at such facilities.”¹⁴⁵ Does the language of this clause simply mean that the just and reasonable ratemaking focus of the Martha Wright-Reed Act is not intended to interfere with any correctional official’s decision on whether to implement any type of safety or security measure that the official desires in conjunction with audio or video communications services? Why or why not? How broadly should the Commission interpret the phrase “safety and security measures” in this section? Should the Commission rely on prior definitions of safety and security measures in these types of facilities? We also seek comment on how we should construe the word “related.” What does it mean when safety and security measures are “related” to telephone service or advanced communications services?

68. We note that the Martha Wright-Reed Act also references “safety and security measures” in section 3(b)(2), which requires the Commission to consider the costs associated with “necessary” safety and security measures in determining just and reasonable rates.¹⁴⁶ How do commenters propose that the Commission reconcile the language of this clause with the Commission’s duty under the Act to ensure that rates are “just and reasonable”? The provision in section 3(b)(2) requires that the Commission consider certain costs when determining just and reasonable rates, whereas the reference in section 4 ensures that correctional officials retain the ability to implement “related” safety and security measures. Thus, under section 4, correctional officials remain free to implement any safety and security measures related to inmate telephone service or advanced communications services. We seek comment on this analysis.

69. Consistent with the above analysis, we seek comment on what relationship, if any, section 4 may have with the Commission’s consideration of “necessary” safety and security costs in its ratemaking calculus under section 3. We have recognized that, in some circumstances, correctional officials may have used monetary site commission payments to implement safety and security measures that, for ratemaking purposes, are not necessary for the provision of incarcerated people’s communications services.¹⁴⁷ Contracts between correctional officials and incarcerated people’s communications services providers also may require, as in-kind site commission payments, that the providers implement safety and security measures unrelated to the provision of communications services. Do commenters agree that our decision to exclude the costs of such “unnecessary” measures from our ratemaking calculus will not “prohibit” correctional facilities from implementing them as contemplated by section 4? If not, why not? Are there other considerations we should take into account with respect to the “safety and security measures” clause in section 4?

¹⁴⁵ Martha Wright-Reed Act § 4.

¹⁴⁶ *Id.* § 3(b)(2).

¹⁴⁷ *Cf.* 2021 *ICS Order*, 36 FCC Rcd at 9585, para. 148 (explaining that the Commission has been unable to determine “whether security and surveillance costs that correctional facilities claim to incur in providing inmate calling services are ‘legitimate’ inmate calling services costs that should be recoverable through interstate and international calling rates”); 2021 *ICS Notice*, 36 FCC Rcd at 9665, para. 323 (suggesting that site commission payments may cover “security-related costs . . . that should more appropriately be deemed to be general security services that are added on to inmate calling services but not actually necessary to the provision of the calling service itself”); *see also* Worth Rises Mar. 24, 2021 *Ex Parte* at 3 (arguing that correctional officials justify site commission payments by claiming that such payments compensate them for security and surveillance costs they bear).

70. Finally, we seek comment on the relationship of section 4 to section 276(c) of the Communications Act, as amended,¹⁴⁸ which remains unchanged by the Martha Wright-Reed Act. Section 276(c) provides that, “[t]o the extent that any State requirements are inconsistent with the Commission’s regulations, the Commission’s regulations on such matters shall preempt such State requirements.”¹⁴⁹ In practice, the Commission has relied on the “impossibility exception” to preempt intrastate rates and charges where it is impossible or impracticable to separate the intrastate components of a service from interstate components regulated by the Commission’s rules.¹⁵⁰ The impossibility exception applied to such “jurisdictionally mixed” rates and charges when the Commission adopted rate caps pursuant to its authority under section 201(b) of the Act.¹⁵¹ Since we propose to interpret the Martha Wright-Reed Act to provide the Commission clear authority to set “just and reasonable” rates and charges for both interstate and intrastate services under section 276 of the Communications Act,¹⁵² we propose to find that state regulations that exceed the rates or rate caps we adopt pursuant to the Martha Wright-Reed Act shall be preempted under section 276(c).¹⁵³ We also seek comment on the proper exercise of our preemption authority as it relates to state laws that mandate lower rates and charges for incarcerated people’s communications services or that mandate that such services be offered free to consumers.¹⁵⁴ Additionally, to be clear, we propose to find that section 4 is no bar to the Commission’s preemption authority with respect to establishing the rates and charges for audio and video communications in correctional facilities and prohibiting state or local requirements that would require higher rates or charges. We seek comment on these proposed findings. Further, we propose to find that nothing in section 4 affects the Commission’s prior preemption policies under the impossibility exception, and we seek comment on this proposed finding.

D. Necessary Rule Changes

71. *Changes to Part 64, Subpart FF.* The Martha Wright-Reed Act specifies that the Commission “shall promulgate any regulations necessary to implement this Act and the amendments made by this Act” not earlier than 18 months and not later than 24 months after the date of enactment.¹⁵⁵

¹⁴⁸ 47 U.S.C. § 276(c).

¹⁴⁹ *Id.*

¹⁵⁰ See, e.g., *Qwest Corp. v Minnesota Pub. Utils. Comm’n*, 380 F.3d 367, 372 (8th Cir. 2004) (explaining that “[t]he FCC has authority to preempt state regulation of telecommunications where it is not possible to separate the interstate and intrastate aspects of a communications service, and where the Commission concludes that federal regulation is necessary to further a valid federal regulatory objective”).

¹⁵¹ See, e.g., *2020 ICS Order*, 35 FCC Rcd at 8495-8500, paras. 29-46 (discussing and applying the impossibility exception to determine whether intrastate and jurisdictionally mixed ancillary service charges are subject to the Commission’s ancillary service charge caps); *2021 ICS Order*, 36 FCC Rcd at 9617, para. 217 (justifying the preemption of state regulation of jurisdictionally mixed services under the impossibility exception).

¹⁵² *Supra* Section II.A.1.c.

¹⁵³ 47 U.S.C. § 276(c).

¹⁵⁴ Cal. Penal Code § 2084.5 (West 2023) (providing that state prison or youth residential placement or detention centers operated by the Department of Corrections and Rehabilitation “shall provide persons in their custody and confined in a correctional or detention facility with accessible, functional voice communication services free of charge to the person initiating and the person receiving the communication”); Cal. Welf. & Inst. Code § 208.1 (West 2023) (requiring county or city youth residential placement or detention centers to provide “persons in their custody with accessible, functional voice communication services free of charge to the person initiating and the person receiving the communication”); 2021 Conn. Legis. Serv. P.A. No. 21-54 (S.B. 972), § 1(b) (West) (requiring the Commissioner of Correction to “provide voice communication service to persons who are in the custody of the commissioner and confined in a correctional facility . . . free of charge to such persons and any communication, whether initiated or received through any such service, shall be free of charge to the person initiating or receiving the communication”).

¹⁵⁵ Martha Wright-Reed Act §§ 2-3.

As discussed above, we interpret the statutory amendments to sections 2, 3, and 276 of the Communications Act as providing the Commission plenary authority over all audio or video communications services (other than electronic messaging), by wire or radio, between incarcerated people and individuals not subject to involuntary confinement. As part of the Act, the Commission must ensure that all payphone providers are fairly compensated and that all rates and charges are just and reasonable.¹⁵⁶ We seek comment on what specific rule changes or new rules are necessary to effectuate these statutory mandates. Any comments proposing new or amended rules should include, as part of the commenter's submission, a draft rule or markup of an existing rule to be incorporated into Subpart FF of Part 64 of the Commission's rules.¹⁵⁷ We note that while the Act precludes our implementing rules from becoming effective earlier than July 2024, the statutory amendments became effective upon enactment and are effective today.¹⁵⁸ Pending the effective date of any new rules we adopt, any entity that is an inmate calling services provider within the meaning of our existing rules must comply fully with those rules.¹⁵⁹

72. The Act allows or requires that we make certain types of data analyses in promulgating implementing regulations.¹⁶⁰ We propose to interpret the Act as allowing us to perform any and all acts and issue any orders, including orders requiring the submission of data and other information from audio and video communications service providers now covered by the Act, conducive to the discharge of these and our other implementation responsibilities under the Martha Wright-Reed Act.¹⁶¹ We invite comment on this proposal.

73. *Accessibility Rule Changes Necessitated by the Expanded Definition of Advanced Communications Services.* We also seek comment on the extent to which the Martha Wright-Reed Act expands our ability to ensure that any audio and video communications services used by incarcerated people are accessible to and usable by people with disabilities. With the addition of this new category of services to the definition of "advanced communications services," some of these services, as well as some equipment used for such services, regardless of technology used, may be newly subject to accessibility requirements under section 716 of the Communications Act.¹⁶² Section 716, added to the Communications Act by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),¹⁶³ requires providers of advanced communications services and manufacturers of equipment used with such services to ensure that such services and equipment are accessible to and usable by people with disabilities, unless doing so is not achievable.¹⁶⁴ If accessibility is not achievable either by building it into the service or equipment or by using third party accessibility solutions, then a manufacturer or service provider must ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment, unless not achievable.¹⁶⁵ Each provider of advanced

¹⁵⁶ *Id.* § 2.

¹⁵⁷ 47 CFR §§ 64.6000-64.6130.

¹⁵⁸ Martha Wright-Reed Act § 3(a). The Act became effective upon its being signed into law on January 5, 2023.

¹⁵⁹ *See* 47 CFR § 64.6000(j), (s).

¹⁶⁰ Martha Wright-Reed Act § 3(b).

¹⁶¹ *Cf.* 47 U.S.C. § 154(i).

¹⁶² 47 U.S.C. § 617.

¹⁶³ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of U.S.C. tit. 47) (CVAA). The law was enacted on October 8, 2010. *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (also enacted on October 8, 2010; making technical corrections).

¹⁶⁴ 47 U.S.C. § 617(a)(1), (b)(1), (e).

¹⁶⁵ *Id.* § 617(c).

communications services has a duty not to install network features, functions, or capabilities that impede accessibility or usability.¹⁶⁶ In 2011, the Commission adopted Part 14 of its rules, which implements these statutory provisions, requiring service providers and equipment manufacturers of all types of advanced communications services and equipment to meet specific obligations, performance objectives, recordkeeping, and reporting requirements.¹⁶⁷

74. We seek comment generally on what changes to Part 14 of our rules are needed to implement the amended definition of “advanced communications services.” We specifically propose to amend the Part 14 definition of “advanced communications services” to incorporate the amended statutory definition, and seek comment on this proposal. Is there any reason we should not adopt the statutory definition verbatim? Are there specific terms in the new category of advanced communications services, apart from those raised above,¹⁶⁸ that we should separately define in section 14.10 of our rules, and if so, how should they be defined?

75. We also seek comment on whether any changes are needed to other provisions of Part 14 to reflect the inclusion of these services and equipment. For example, are there specific performance objectives or recordkeeping requirements that should be added or modified to ensure that providers of covered communications services and manufacturers of associated equipment used by incarcerated people are in full compliance with their accessibility obligations?

76. *Payphones Other Than in the Incarceration Context.* Although the Martha Wright-Reed Act specifically addresses payphones in the incarceration context, certain amendments to section 276 of the Communications Act apply to payphones more generally, including both those used by incarcerated people and those used by the public, in the case of more traditional payphones. For payphone service outside of the incarceration context, we propose to find that no new regulations are “necessary” to implement the Martha Wright-Reed Act and its amendments to the Communications Act pursuant to section 3(a) of the Act. Accordingly, we propose relying on our existing rules governing traditional payphone service to ensure that all payphone providers outside of the incarceration context are fairly compensated and that their rates and charges are just and reasonable, consistent with section 276(b)(1)(a), as amended.¹⁶⁹ We seek comment on the proposal to find new payphone service rules unnecessary and to

¹⁶⁶ *Id.* § 617(d).

¹⁶⁷ *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision; Amendments to the Commission’s Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, CG Docket Nos. 10-213 and 10-145, WT Docket No. 96-198, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 (2011); *see also* 47 CFR §§ 14.20, 14.21, 14.31.

¹⁶⁸ *See supra* Section III.A.2.

¹⁶⁹ Martha Wright-Reed Act § 2(a)(1)(B); 47 U.S.C. § 276(b)(1)(a). In 1999, the Commission determined that traditional (i.e., non-inmate calling services) payphones do not require pricing regulation because that portion of the payphone market was sufficiently competitive. *Implementation of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545, 2548, para. 2 (1999) (*1999 Traditional Payphone Order*) (“The Commission also deregulated the local coin rate for payphone calls to allow the competitive market place to set fair compensation for such calls.”). In addition, advancements in mobile and wireless technology have made traditional payphones virtually obsolete. *See, e.g., id.* at 2550, para. 9 (asserting that the rapid growth of cellphone technology provides an alternative to traditional payphones, leading to “a reduction in the deployment of payphones in some areas”); *Modernization of Payphone Compensation Rules; Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; 2016 Biennial Review of Telecommunications Regulations*, WC Docket Nos. 17-141 and 16-123, CC Docket No. 96-128, Report and Order, 33 FCC Rcd 2589, 2589-90, 2591, paras. 1, 4-6 (2018) (“eliminat[ing] rules that are no longer needed to ensure that payphone service providers (PSPs) receive the compensation to which they are entitled” and finding that “the steady and steep decline over more than a decade of the number of payphones in service

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continue relying on our existing rules to satisfy any of the new statutory requirements that apply outside the incarceration context.

77. *Effect on Small Entities.* We recognize that our actions in this proceeding may affect several groups of small entities. For example, payphone service providers that provide only limited communications services to incarcerated people, or that provide communications services to incarcerated people via technologies not previously covered by section 276, will be subject to new regulatory requirements. In addition, our implementation of the Martha Wright-Reed Act may subject entities currently subject to our inmate calling services rules to new regulatory obligations. We therefore seek comment on how we should take into account the impact on small businesses and, in particular, any disproportionate impact or unique burdens that small businesses may face, in effectuating the mandates set forth in the Martha Wright-Reed Act and the Communications Act. Parties should also address any alternative proposals that would minimize the burdens on small businesses.

E. Other Reforms to Incarcerated People’s Communications Services

78. In addition to seeking comment on actions the Commission should take to implement the Martha Wright-Reed Act, we propose revisions to our rules to reflect updated language used to refer to calls made by incarcerated people. Our rules currently use “inmate calling services” or “ICS” to refer to “a service that allows Inmates to make calls to individuals outside the Correctional Facility where the Inmate is being held, regardless of the technology used to deliver the service.”¹⁷⁰ With the Martha Wright-Reed Act’s expansion of the Commission’s authority beyond calling services to include all audio and video communications services used by incarcerated people, the Commission uses today and will use going forward the term “incarcerated people’s communications services” or “IPCS” to refer to these broader service offerings.¹⁷¹ In connection with this change in terminology, we have also changed references to “inmates” to “incarcerated people” at the request of public interest advocates.¹⁷² To reflect this evolution in terminology, we propose codifying these changes in our existing rules and in any new rules we adopt pursuant to this proceeding.¹⁷³ We seek comment on this proposal.

79. Finally, we invite parties to comment on any other matters that may be relevant to our implementation of the Martha Wright-Reed Act to adopt just and reasonable rates and charges for incarcerated people’s audio and video communications services.

F. Digital Equity and Inclusion

80. The Commission, as part of its continuing effort to advance digital equity for all,¹⁷⁴ including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations¹⁷⁵ and benefits (if any) that may be

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demonstrates that they no longer play as critical a role in society’s communications as they once did, as would-be users rely instead on mobile subscriptions”).

¹⁷⁰ 47 CFR § 64.6000(j).

¹⁷¹ See *supra* note 36.

¹⁷² See United Church of Christ July 29, 2020 *Ex Parte* Letter at 1-2 (urging the Commission to “revise the title of this docket and eliminate the term ‘inmate,’” explaining that “[m]any incarcerated people and advocates view the term ‘inmate’ as dehumanizing and disparaging”).

¹⁷³ See 47 CFR §§ 64.1200(a)(9)(ii), 64.6000-64.6120.

¹⁷⁴ Section 1 of the Communications Act provides that the Commission “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

¹⁷⁵ The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have

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associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. ORDER

81. The Martha Wright-Reed Act directs the Commission to promulgate regulations necessary to implement its provisions not earlier than 18 months and not later than 24 months after the date of its enactment, and includes specific language addressing the use of data in promulgating implementing regulations.¹⁷⁶ The statutory language provides both guidance and directives regarding data, including allowing the Commission to “use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider” in determining just and reasonable rates.¹⁷⁷ It further states that the Commission “shall consider costs associated with safety and security measures necessary to provide a service” and “differences in costs” by “small, medium and large facilities or other characteristics.”¹⁷⁸ These provisions contemplate and require the collection and analysis of advanced communications services' costs and related data, especially for video communications, among other data that, prior to the Act, the Commission either had no jurisdiction to collect or reason for doing so.¹⁷⁹ The data analysis to implement the statute's mandate that rates and charges be “just and reasonable” must be completed within the required 18 to 24 month timeframe.

82. To ensure that we have the data we need, in the timeframe to meet this statutory mandate, and given the procedurally complex and time-consuming process for data collections such as these, we reaffirm the Commission's prior delegation of authority to WCB and OEA and direct them to update the prior data collection to encompass, and collect, data on all incarcerated people's communications services from all providers of those services now subject to our expanded authority under the Martha Wright-Reed Act and the Communications Act.¹⁸⁰ Specifically, we delegate authority to WCB and OEA to update and restructure the most recent data collection as appropriate to implement the Martha Wright-Reed Act.¹⁸¹ The Commission has conducted three data collections related to incarcerated people's calling services in

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been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

¹⁷⁶ Martha Wright-Reed Act § 3(a)-(b).

¹⁷⁷ *Id.* § 3(b)(1).

¹⁷⁸ *Id.* § 3(b)(2).

¹⁷⁹ *See* *GTL v. FCC*, 866 F.3d at 413 (vacating a Commission reporting requirement related to video visitation services, as “too attenuated to the Commission's statutory authority”).

¹⁸⁰ For example the most recent data collection, limited only to inmate telephone services data, took nearly 14 months from the date the Commission delegated authority to WCB and OEA to conduct the data collection on May 24, 2021, to obtaining OMB approval of the data collection instructions and templates, issuing the order directing providers to file their responses and waiting for the data responses to be filed on June 30, 2022 (a total 402 days for Commission staff to receive responses from the date of delegation of authority). *See* 2021 ICS Order, 36 FCC Rcd at 9618, para. 218; *see also* *Wireline Competition Bureau Announces the Due Date for Responses to the Commission's Inmate Calling Services Third Mandatory Data Collection*, WC Docket No. 12-375, Public Notice, DA 22-214 (WCB Mar. 2, 2022) (establishing the response due date of June 30, 2022). In addition to these steps, WCB and OEA will need time to compile the data into a consistent and meaningful format, analyze the data, and make recommendations for Commission consideration to result in the Act's implementing rules.

¹⁸¹ Martha Wright-Reed Act §§ 2-3.

the past ten years. To allow for consistent data reporting, the Commission directed the Commission staff to develop a template for providers to use when submitting their data and to furnish providers with instructions to implement the collection.¹⁸² The Commission also directed staff to review the providers' submissions and delegated to the staff the authority to require providers to submit additional data as necessary to perform its review.¹⁸³

83. We conclude that we must immediately begin the process of updating and restructuring the most recent data collection if we are to meet both our procedural obligations (to consider certain types of data) and our substantive responsibilities (to set just and reasonable rates and charges) under the Martha Wright-Reed Act and the Communications Act.¹⁸⁴ We therefore delegate to WCB and OEA authority to implement any appropriate modifications to this data collection, including with respect to information concerning "any audio or video communications service used by inmates for the purpose of communicating with individuals outside of the correctional institution where the inmate is held, regardless of technology used."¹⁸⁵ We direct WCB and OEA to modify the template and instructions for the collection¹⁸⁶ to the extent appropriate to timely collect such information to cover the additional services and providers now subject to our authority.¹⁸⁷ We also delegate to WCB and OEA the authority to require providers now covered by section 276 of the Communications Act to submit any additional information that they find will assist the Commission in implementing the Martha Wright-Reed Act, including, but not limited to, the authority to request more recent data for additional years not covered by the most recent data collection. Finally, we delegate to WCB and OEA the authority to conduct the requisite Paperwork Reduction Act analysis for any new or modified data collection(s) that they implement pursuant to this Order. Any new or modified requirements that require approval from the Office of Management and Budget (OMB) under the Paperwork Reduction Act shall be effective on the date specified in a notice published in the Federal Register announcing OMB's approval.

84. *Annual Reports.* We also reaffirm and update the Commission's prior delegation of authority to WCB and the Consumer and Governmental Affairs Bureau (CGB) to revise the instructions and reporting template for the Annual Reports that all service providers are required to file each year.¹⁸⁸ Specifically, we delegate authority to WCB and CGB to modify, supplement, and update those instructions and that template as appropriate to supplement the information we will be receiving in response to the Mandatory Data Collection described above. We find that this additional information is needed to enable us to understand the rates and ancillary service fees incarcerated people's communications services providers charge for or in connection with all the audio and video services now subject to our authority.¹⁸⁹ Finally, we delegate to WCB and CGB the authority to conduct the requisite Paperwork Reduction Act analysis for any changes to the Annual Report requirements that are implemented pursuant to this Order.

¹⁸² 2021 ICS Order, 36 FCC Rcd at 9620, para. 221; 2015 ICS Order, 30 FCC Rcd at 12863, para. 201; 2013 ICS Order, 28 FCC Rcd at 14173, para. 126.

¹⁸³ 2021 ICS Order, 36 FCC Rcd at 9622, para. 227; 2015 ICS Order, 30 FCC Rcd at 12863, para. 201; 2013 ICS Order, 28 FCC Rcd at 14173, para. 126.

¹⁸⁴ See Martha Wright-Reed Act § 3.

¹⁸⁵ *Id.* § 2.

¹⁸⁶ See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, DA 22-52 (WCB/OEA Jan. 18, 2022).

¹⁸⁷ See 2021 ICS Order, 36 FCC Rcd at 9620, para. 221.

¹⁸⁸ See 2022 ICS Order at 25, para. 52.

¹⁸⁹ We note that incarcerated people's communications services providers that do not provide any services classified as inmate calling services under our current rules will not be subject to this reporting requirement. See 47 CFR §§ 64.6000(j), (s), 64.6060.

85. *Effective Date of Delegations of Authority.* Our delegations of authority to WCB, OEA, and CGB will take effect immediately upon publication of this Order in the Federal Register. Making the delegations effective at that time will enable WCB, OEA, and CGB to move as expeditiously as practicable toward modifying, supplementing, and updating the Third Mandatory Data Collection to include additional information to facilitate our ability to fully implement the Martha Wright-Reed Act. Indeed, the Martha Wright-Reed Act directs the Commission to “promulgate any regulations necessary” to establish just and reasonable rates “not later than 24 months” after enactment.¹⁹⁰ Any unnecessary delay in our efforts to collect appropriate information would be inconsistent with, and undermine the Commission’s ability to meet the deadlines contained in, the Act. Furthermore, given the importance of these areas to incarcerated people, including those with communication disabilities, any unnecessary delay in these initiatives would be inconsistent with the public interest.

86. For purposes of administrative efficiency and to further assist the Commission in its efforts to implement the Martha Wright-Reed Act, we intend to consider the extensive record developed in WC Docket No. 12-375, Rates for Interstate Inmate Calling Services, and hereby incorporate the record of that proceeding into WC Docket No. 23-62.

V. PROCEDURAL MATTERS

87. *Filing of Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.¹⁹¹ Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).¹⁹²

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers:
 - Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.¹⁹³
- Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission’s rules. We direct all interested parties to include the name of the filing party and the date of the filing on each

¹⁹⁰ Martha Wright-Reed Act § 3.

¹⁹¹ 47 CFR §§ 1.415, 1.419.

¹⁹² See FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

¹⁹³ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Red 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the Notice of Proposed Rulemaking in order to facilitate our internal review process.

88. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530.

89. *Ex Parte Rules.* The proceeding that the Notice of Proposed Rulemaking initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁹⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b).¹⁹⁵ In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

90. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹⁹⁶ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”¹⁹⁷ Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule and policy changes contained in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix A.

91. *Paperwork Reduction Act.* This Order does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA).¹⁹⁸ In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.¹⁹⁹

92. *Initial Paperwork Reduction Act of 1995 Analysis.* The Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the PRA.²⁰⁰ If the Commission adopts

¹⁹⁴ 47 CFR § 1.1200 *et seq.*

¹⁹⁵ *Id.* § 1.1206(b).

¹⁹⁶ See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹⁹⁷ *Id.*

¹⁹⁸ Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520).

¹⁹⁹ 44 U.S.C. § 3506(c)(4).

²⁰⁰ Pub. L. No. 104-13.

any new or modified information collection requirements, they will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in these proceedings. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,²⁰¹ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”²⁰²

VI. ORDERING CLAUSES

93. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 5(c), 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), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat 6156 (2022), this Notice of Proposed Rulemaking and Order ARE ADOPTED.

94. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 5(c), 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), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat 6156 (2022), and sections 0.201 and 1.103(a) of the Commission’s rules, 47 CFR §§ 0.201, 1.103(a), this Order delegating authority to the Wireline Competition Bureau, the Office of Economics and Analytics, and the Consumer and Governmental Affairs Bureau SHALL BE EFFECTIVE upon publication in the Federal Register.

95. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission’s Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before 30 days after publication of a summary of this Notice of Proposed Rulemaking in the Federal Register and reply comments on or before 60 days after publication of a summary of this Notice of Proposed Rulemaking in the Federal Register.

96. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking and Order to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁰¹ Pub. L. No. 107-198.

²⁰² 44 U.S.C. § 3506(c)(4).

APPENDIX A**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rule Making.² Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the Notice of Proposed Rulemaking. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).³ In addition, the Notice and IRFA (or summaries thereof) will be published in the *Federal Register*.⁴

A. Need for, and Objectives of, the Proposed Rules

2. In the Notice, the Commission seeks comment on implementing the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act), enacted by Congress to ensure just and reasonable rates for telephone and advanced communications services in correctional and detention facilities. The Act was passed in an effort to remedy decades of exorbitant rates for telecommunications services paid by family members, clergy, counsel and other critical support systems.

3. The Commission seeks comment on the purpose and scope of the amendments made to the Commission's authority and how the Act expands its authority over incarcerated people's communications services, including over advanced communications services, intrastate services, and "any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used."⁵ The Commission also seeks comment on the Act's directions regarding how it should consider implementing the Act, including when the Commission is to adopt rules, the use of data to set just and reasonable rates, the costs of facility safety and security measures, and the size of correctional facilities. Lastly, the Commission also seeks comment on how the Act affects its ability to ensure that incarcerated people's communications services and associated equipment promote digital equity and are accessible to and usable by incarcerated people with disabilities.

B. Legal Basis

4. The proposed action is authorized pursuant to Sections 1, 2, 4(i)-(j), 5(c), 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), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat 6156 (2022).

¹ See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² This item continues ongoing efforts to reform providers' rates, charges, and practices in connection with interstate and international inmate calling services. See, e.g., *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519 (2021); *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, FCC 22-76 (Sept. 30, 2022).

³ See 5 U.S.C. § 603(a).

⁴ *Id.*

⁵ Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (Martha Wright-Reed Act or the Act).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.⁸ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.¹⁰ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹¹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.¹²

7. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹³ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁴ Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁵

⁶ 5 U.S.C. § 603(b)(3).

⁷ See 5 U.S.C. § 601(6).

⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁹ See 15 U.S.C. § 632.

¹⁰ See 5 U.S.C. § 601(3)-(6).

¹¹ See SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/12/06095731/Small-Business-FAQ-Revised-December-2021.pdf> (Dec. 2021).

¹² *Id.*

¹³ See 5 U.S.C. § 601(4).

¹⁴ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data do not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁵ See Exempt Organizations Business Master File Extract (EO BMF), CSV Files by Region, <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-ao-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations.

(continued...)

8. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁶ U.S. Census Bureau data from the 2017 Census of Governments¹⁷ indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁸ Of this number there were 36,931 general purpose governments (county¹⁹ or municipal and town or township²⁰) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts²¹ with enrollment populations of less than 50,000.²² Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²³

9. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²⁴ Transmission facilities may be based on a single technology or a

(Continued from previous page) _____

The data utilized for purposes of this description were extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000, for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) which includes the continental U.S., Alaska, and Hawaii. These data do not include information for Puerto Rico.

¹⁶ See 5 U.S.C. § 601(5).

¹⁷ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7.” See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁸ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, or municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁹ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²⁰ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²¹ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

²² While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data do not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts are included in the special purpose governments category.

²³ This total is derived from the sum of the number of general purpose governments (county, or municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

²⁴ See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including Voice over Internet Protocol (VoIP) services, wired (cable) audio and video programming distribution, and wired broadband internet services.²⁵ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁶ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.²⁷

10. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.²⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²⁹ Of this number, 2,964 firms operated with fewer than 250 employees.³⁰ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.³¹ Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.³² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers³³ is the closest industry with a SBA small business size standard.³⁴ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³⁵ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms

²⁵ *Id.*

²⁶ *Id.*

²⁷ Fixed Local Service Providers include the following types of providers: incumbent LECs, Competitive Access Providers (CAPs) and competitive LECs, Cable/Coax competitive LECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers are not included in this industry.

²⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

³⁰ *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

³¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

³² *Id.*

³³ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³⁵ Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

³⁶ *Id.*

that operated in this industry for the entire year.³⁷ Of this number, 2,964 firms operated with fewer than 250 employees.³⁸ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers.³⁹ Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.⁴⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers⁴¹ is the closest industry with a SBA small business size standard.⁴² The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴³ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁴⁴ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁵ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.⁴⁶ Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.⁴⁷ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

13. *Competitive Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.⁴⁸

³⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

³⁸ *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁴⁰ *Id.*

⁴¹ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴² See 13 CFR § 121.201, NAICS Code 517311.

⁴³ *Id.*

⁴⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁴⁵ *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁶ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁴⁷ *Id.*

⁴⁸ Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (competitive LECs, Cable/Coax competitive LECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

Wired Telecommunications Carriers⁴⁹ is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵¹ Of this number, 2,964 firms operated with fewer than 250 employees.⁵² Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.⁵³ Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees.⁵⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁵⁵ is the closest industry with a SBA small business size standard.⁵⁶ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁸ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁹ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees.⁶⁰ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

15. *Local Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with

⁴⁹ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁰ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

⁵² *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵³ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁵⁴ *Id.*

⁵⁵ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁷ *Id.*

⁵⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

⁵⁹ *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

a SBA small business size standard.⁶¹ The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.⁶² Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁶³ Mobile virtual network operators (MVNOs) are included in this industry.⁶⁴ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁶⁵ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁶⁶ Of that number, 1,375 firms operated with fewer than 250 employees.⁶⁷ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services.⁶⁸ Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees.⁶⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers⁷⁰ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁷¹ MVNOs are included in this industry.⁷² The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁷³ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁷⁴ Of that number, 1,375 firms operated with fewer than 250

⁶¹ See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁶⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁶⁷ *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁶⁹ *Id.*

⁷⁰ See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁷⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

employees.⁷⁵ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services.⁷⁶ Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees.⁷⁷ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁷⁸ is the closest industry with a SBA small business size standard.⁷⁹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁸⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁸¹ Of this number, 2,964 firms operated with fewer than 250 employees.⁸² Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services.⁸³ Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees.⁸⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA have developed a small business size standard specifically for payphone service providers, a group that includes incarcerated people's communications services providers. Telecommunications Resellers⁸⁵ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁸⁶ Mobile virtual network operators (MVNOs)

⁷⁵ *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁶ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁷⁷ *Id.*

⁷⁸ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁹ See 13 CFR § 121.201, NAICS Code 517311.

⁸⁰ *Id.*

⁸¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁸² *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸³ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁸⁴ *Id.*

⁸⁵ See U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁸⁶ *Id.*

are included in this industry.⁸⁷ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁸⁸ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁸⁹ Of that number, 1,375 firms operated with fewer than 250 employees.⁹⁰ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 58 providers that reported they were engaged in the provision of payphone services.⁹¹ Of these providers, the Commission estimates that 57 providers have 1,500 or fewer employees.⁹² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *Telecommunications Relay Service (TRS) Providers.* Telecommunications relay services enable individuals who are deaf, hard of hearing, deaf-blind, or who have a speech disability to communicate by telephone in a manner that is functionally equivalent to using voice communication services.⁹³ Internet-based TRS (*iTRS*) connects an individual with a hearing or a speech disability to a TRS communications assistant using an Internet Protocol-enabled device via the Internet, rather than the public switched telephone network.⁹⁴ Video Relay Service (VRS) one form of *iTRS*, enables people with hearing or speech disabilities who use sign language to communicate with voice telephone users over a broadband connection using a video communication device.⁹⁵ Internet Protocol Captioned Telephone Service (IP CTS) another form of *iTRS*, permits a person with hearing loss to have a telephone conversation while reading captions of what the other party is saying on an Internet-connected device.⁹⁶ Providers must be certified by the Commission to provide VRS and IP CTS⁹⁷ and to receive compensation from the TRS Fund for TRS provided in accordance with applicable rules.⁹⁸

20. Neither the Commission nor the SBA have developed a small business size standard specifically for TRS Providers. All Other Telecommunications is the closest industry with a SBA small business size standard.⁹⁹ Internet Service Providers (ISPs) and Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are included in this industry.¹⁰⁰ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as

⁸⁷ *Id.*

⁸⁸ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁸⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁹⁰ *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁹² *Id.*

⁹³ 47 U.S.C. § 225(a)(3).

⁹⁴ 47 CFR § 64.601(a)(22). Except as authorized or required by the Commission, Internet-based TRS does not include the use of a text telephone (TTY) or RTT over an interconnected Voice over Internet Protocol service.

⁹⁵ *Id.* § 64.601(a)(51).

⁹⁶ *Id.* § 64.601(a)(23).

⁹⁷ *Id.* § 64.606(a)(2).

⁹⁸ *Id.* § 64.604(c)(5)(iii)(F).

⁹⁹ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁰⁰ *Id.*

small.¹⁰¹ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁰² Of those firms, 1,039 had revenue of less than \$25 million.¹⁰³ Based on Commission data there are ten certified *iTRS* providers.¹⁰⁴ The Commission however does not compile financial information for these providers. Nevertheless, based on available information, the Commission estimates that most providers in this industry are small entities.

21. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.¹⁰⁵ This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.¹⁰⁶ Providers of Internet services (e.g. dial-up ISPs) or VoIP services, via client-supplied telecommunications connections are also included in this industry.¹⁰⁷ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹⁰⁸ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁰⁹ Of those firms, 1,039 had revenue of less than \$25 million.¹¹⁰ Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

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

22. In the Notice, the Commission seeks comment on further reforms to the regulations governing incarcerated people’s communications services, which could potentially affect potential reporting and compliance requirements for small entities and for providers of incarcerated people’s communications services of all sizes. For example, the Notice seeks comment on whether to continue

¹⁰¹ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁰² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹⁰³ *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁰⁴ See [Internet-Based TRS Providers | Federal Communications Commission \(fcc.gov\)](https://www.fcc.gov/general/internet-based-trs-providers), <https://www.fcc.gov/general/internet-based-trs-providers> (last visited February 15, 2023).

¹⁰⁵ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁰⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹¹⁰ *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

using a “total industry cost” approach in setting rate caps, which would result in the same per-unit rate caps for interstate and intrastate voice services. Were the Commission to follow this approach in implementing the Act’s “just and reasonable rates” requirement—resulting in a unitary rate cap for any providers of incarcerated people’s interstate and intrastate communications services—it would potentially reduce the compliance burden on smaller providers.

23. The Commission’s implementation of the Martha Wright-Reed Act may require entities, including small entities and incarcerated people’s communications services providers of all sizes, currently subject to our inmate calling services rules to be subject to modified or new reporting or other compliance obligations. This may also be the case for providers newly subject to the Commission’s expanded regulatory authority, such as providers offering only intrastate or certain advanced communications. In addition, we recognize that our actions in this proceeding may affect the reporting, recordkeeping, and other compliance requirements for several groups of small entities. In assessing the cost of compliance for small entities and for providers of incarcerated people’s communications services of all sizes, at this time the Commission is not in a position to determine whether the proposed rules in the Notice will impose any significant costs for compliance in general, or whether it will require small entities to hire attorneys, engineers, consultants, or other professionals to comply. It is also undetermined at this time if any new software, or modifications to existing software, will be necessary for small entities and for providers of incarcerated people’s communications services of all sizes to effectively comply with the proposed rules.

24. Within 18-24 months following enactment, the Commission is required by the Martha Wright-Reed Act to adopt rules to ensure that the rates and fees for incarcerated people’s communications services are just and reasonable. This may include new ratemaking methodologies, such as the use of industry-wide average costs of telephonic service and advanced communications data; new services, such as any audio or video communications service used to communicate with persons outside of the facility, regardless of technology used; and new entities, such as providers that are newly subject to our authority. In the Notice, the Commission seeks comment on the collection and use of existing and additional data in determining just and reasonable rates and charges for incarcerated people’s communications services, as well as on the implementation of its newly expanded jurisdictional authority. If rules are adopted pursuant to these proposals, they would apply to incarcerated people’s communications services providers of all sizes, including small providers.

25. The Commission seeks comment on updating and restructuring its current (third) mandatory data collection. First, to the extent that the Commission updates and restructures its most recent data collection, providers of incarcerated people’s communications services of all sizes, including small providers, would need to maintain and report their cost data in accordance with the Commission’s rules. Similarly, if the Commission imposes data collection requirements, or other new rules specific to implementation of the Martha Wright-Reed Act, the data collection requirements and other rules will be applicable to incarcerated people’s communications services providers of all sizes. The Commission also seeks comment on how it should proceed if a particular provider or providers do not provide reliable and accurate information in response to the updated data collection. Any procedures it may adopt would impact reporting requirements for all relevant entities, including small entities. Additionally, the Commission seeks comment how to proceed if information submitted by providers does not allow it to determine with precision the costs attributable to any particular service or function, or groups of services or functions. Any steps the Commission would take to ensure the accuracy or precision of providers’ data submissions could also potentially affect reporting requirements for all relevant entities, including small entities and providers of incarcerated people’s communications services of all sizes.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

26. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements

or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.¹¹¹

27. In the Notice, the Commission seeks to fulfill Congress's intent via the implementation of the Martha Wright-Reed Act, including its directive that the Commission ensure just and reasonable rates and charges for incarcerated people's audio and video communications services. While doing so, the Commission is mindful of the potential impact on small businesses and, in particular, any disproportionate impact or unique burdens that small businesses may face in complying with any rules the Commission may adopt. Below we discuss several steps the Commission has taken that could reduce the economic impact for small entities.

28. Allowing additional time for small and medium-sized businesses to comply with the proposed rules, including the timeframe for compliance, could reduce the economic impact for small entities. We considered and seek comment on whether such an approach would serve the public interest. In doing so, we have provided small entities the opportunity to offer alternatives not already considered, giving small entities ample time to minimize whatever potential burdens they may face.

29. The Commission also seeks comment on the Martha Wright-Reed Act's directive to consider the size of incarceration facilities in setting just and reasonable rates and charges for services.¹¹² The Commission seeks comment on whether the "industry-wide" average cost language in the Martha Wright-Reed Act refers only to some subset of providers of incarcerated people's communications services or all such providers.¹¹³ In doing so, the Commission seeks information that will help to determine the appropriate approach to ensuring just and reasonable rates as required by the Act. The Commission would also benefit by using the information obtained from comments to inform its evaluation of its regulatory options, including those that may potentially be less burdensome for smaller providers.

30. The Martha Wright-Reed Act states that the Commission "shall consider . . . differences in the costs . . . by small, medium or large facilities or other characteristics," as part of its rate-setting process.¹¹⁴ The Commission seeks comment on how to interpret "small, medium, or large facilities."¹¹⁵ We considered and seek comment on whether the Commission is obligated to consider potential cost differences associated with serving different-sized facilities if it sets rates based on something other than industry-wide average costs. This information will assist the Commission in considering alternatives such as whether it should implement more or fewer rate tiers based on the type or size of facility, and whether the Commission should set the same rates for small, medium, and large facilities after considering cost differences, if any.

31. Considering the economic impact on small entities through comments filed in response to the Notice and this IRFA, as part of its efforts to implement the Martha Wright-Reed Act and promulgate rules in these proceedings, could allow the Commission to potentially obtain cost-benefit analyses and other input that would enable it to identify reasonable alternatives that may not be readily apparent, and offer alternatives not already considered that could minimize the economic impact on small entities.

¹¹¹ 5 U.S.C. § 603(c)(1)-(4).

¹¹² Martha Wright-Reed Act § 3(b).

¹¹³ *Id.* § 3(b)(1).

¹¹⁴ *Id.* § 3(b)(2).

¹¹⁵ *Id.*

- F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**
32. None.