

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Rates for Interstate Inmate Calling Services ) WC Docket No. 12-375  
 )

**COMMENTS OF  
UNITED CHURCH OF CHRIST, NEW AMERICA'S OPEN TECHNOLOGY  
INSTITUTE, FREE PRESS, BENTON INSTITUTE FOR BROADBAND & SOCIETY,  
NATIONAL CONSUMER LAW CENTER (ON BEHALF OF ITS LOW-INCOME  
CLIENTS), AND PUBLIC KNOWLEDGE**

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## EXECUTIVE SUMMARY

Incarcerated people and the people who seek to remain connected with them face undue burdens in accessing telecommunications services otherwise available and more affordable for the rest of society. ICS providers charge extremely high rates for families to call one another, putting many in debt, and risking recidivism for those inside carceral facilities by limiting communication for people who are more likely to succeed by maintaining community ties during their incarceration. The Commission raises several key questions on how to improve the ability of those incarcerated to communicate with their families, advocates, and others. Joint Advocates provide several recommendations to ensure that people in jails and prisons nationwide can still communicate with those outside carceral facilities, including:

- ensure equivalent access to telecommunications services for incarcerated people with disabilities;
- adopt lower rates across all categories of services, for all sizes of carceral facilities, and exclude from costs site commissions, fees, and services irrelevant to the provision of communications services; and
- collect accurate data periodically on ICS costs and the ICS marketplace.

## I. INTRODUCTION

United Church of Christ, OC Inc., New America’s Open Technology Institute, Free Press, Benton Institute for Broadband & Society,<sup>1</sup> the National Consumer Law Center (on behalf of its low-income clients), and Public Knowledge (hereafter, Joint Advocates) respectfully submit these comments in the above referenced proceeding on the Commission’s additional proposed reforms for calling services rates, services, and practices, including permanent rate caps, for incarcerated people. Commenters generally welcome the Commission’s efforts to address the many, long-standing injustices in communications services addressed, in part, by the present FNPRM. This proceeding considers two critical overarching questions, about what can be done to ensure that incarcerated persons with disabilities can have access to communications rights afforded to them by law, and about the transition from interim rate caps to more permanent ones informed by complete and accurate data. However, we remain concerned with certain aspects of the proposed changes, particularly those that rest on a distinction between facilities that is based on their average daily population (“ADP”), consideration of reporting burdens, and the inclusion of security and ancillary costs. We envision more affordable interim and permanent rates necessary for incarcerated people, their loved ones, counsels, advocates, and religious advisors to connect with one another.

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<sup>1</sup> Benton, a non-profit, operating foundation, believes that communication policy—rooted in the values of access, equity, and diversity—has the power to deliver new opportunities and strengthen communities to bridge our divides. Its goal is to bring open, affordable, high-capacity and competitive broadband to all people in the U.S. to ensure a thriving democracy. These comments reflect the institutional view of the Benton Institute for Broadband & Society, and, unless obvious from the text, are not intended to reflect the views of its individual officers, directors, or advisors.

## **II. THE COMMISSION SHOULD REQUIRE FUNCTIONALLY EQUIVALENT ACCESS TO TELECOMMUNICATIONS RELAY SERVICES, DIRECT VIDEO AND TEXT COMMUNICATIONS FOR INCARCERATED PEOPLE WITH DISABILITIES, AND ELIMINATE UNJUST CHARGES.**

Deaf/disabled incarcerated people face significant burdens in communication as compared with hearing people, which the Commission should immediately address. In a meeting with the Commission earlier this year, disability rights advocates and currently or formerly incarcerated people shared how the deaf/disabled incarcerated are effectively being punished for having a disability during their incarceration.<sup>2</sup> The advocates and impacted individuals noted that these barriers also punish those with an incarcerated loved one, through inadequate communication technology and high rates for accessible services that remain the only options for incarcerated people with disabilities to stay in touch. For example, formerly incarcerated individual Alphonso Taylor shared that as one of just a few deaf people — or possibly the only one — in an institution that refused to provide access to external telecommunications and accessible services, he was almost completely unable to communicate with anyone inside or outside prison. While some institutions have TTY telecommunications service, this technology is outdated and relies on proficiency in the relevant technical language as well as English, which therefore excludes people like Alphonso, who use ASL and do not have fluency in English or in typing. Isolated for four years, he suffered a marked decline in his mental and emotional health. Even after a lawsuit and settlement in Alphonso's state of Maryland, the prison system refused to provide telecommunications or other accommodations required by disability law and his settlement agreement, emphasizing that this issue requires guidance and standard setting by the FCC.<sup>3</sup>

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<sup>2</sup> See *Ex Parte* Notice of Cheryl Leanza, United Church of Christ, OC Inc., WC Docket No. 12-375 (filed May 14, 2021).

<sup>3</sup> See *id.*

The Commission can remove these barriers by requiring access to telecommunications relay services (“TRS”) and direct video and text communications for incarcerated people with disabilities, eliminating unjust additional charges for the use of these services, and implementing expanded transparency requirements. These actions are critical to ensuring that ICS providers comply with their obligations under the accessibility provisions of the Communications Act. Undertaking these actions will help remedy the long-standing injustices faced by incarcerated disabled people and vindicate their human, constitutional, and other civil rights, including rights to communication found within and protected under the Americans with Disabilities Act and Rehabilitation Act.

The Commission further inquires into questions of security and privacy when it comes to video calling and other services that make it possible for those with disabilities to communicate. First and foremost, the Commission must ensure that the costs associated with efforts to push facilities into recognizing the communications rights of people with disabilities should not be passed onto deaf and disabled incarcerated people and their loved ones and thereby compound the inability to access these services due to unreasonable rates.

### **III. THE COMMISSION SHOULD ADOPT LOWER RATES ACROSS ALL CATEGORIES.**

#### **A. *The Commission Must Address Jails Of 1,000 ADP Or Fewer to Ensure that the Benefits of Lower Rates Can be Enjoyed by the Majority of Impacted Individuals.***

The Commission’s proposed decision to lower rates only for people who are incarcerated in jails with an ADP of 1,000 or more leaves more than half of the incarcerated jail population behind.<sup>4</sup> According to the U.S. Department of Justice’s Bureau of Justice Statistics (“BJS”) Jail Census from 2019, 428,000 people—42.2 percent of all incarcerated people—are located in jails

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<sup>4</sup> The Commission seeks comment on rates for jails of varying sizes. *See* Rates for ICS, Third Report & Order and Fifth Further Notice of Proposed Rulemaking, WC Docket No. 12-375, FCC 21-60, at ¶¶ 306-310 (2021) (“Fifth FNPRM”).

with an ADP of 1,000 or greater, leaving a majority of incarcerated people outside of proposed rate caps.<sup>5</sup>

**TABLE 5**  
**Average daily jail population, by size of jurisdiction, 2019**

Jail jurisdiction size (ADP)	Jail jurisdictions		Total ADP		Mean ADP
	Number	Percent	Number	Percent	
Total	2,850	100%	741,900	100%	261
Less than 50 inmates	991	34.8	19,700	2.7	20
50-99	504	17.7	36,500	4.9	72
100-249	642	22.5	101,000	13.6	160
250-499	348	12.2	120,400	16.2	349
500-999	215	7.5	151,100	20.4	706
1,000-2,499	123	4.3	178,900	24.1	1,445
2,500 or more	27	0.9	134,400	18.1	5,039

Note: The average daily population (ADP) is the sum of all inmates in jail each day for the 12-month period ending on June 30, divided by the number of days in the 12-month period. The ADP is rounded to the nearest 100. Jail jurisdiction size is based on the ADP. Details may not sum to totals due to rounding. Standard errors were not calculated because these data represent a complete enumeration based on the 2019 Census of Jails.

Source: Bureau of Justice Statistics, Census of Jails, 2019.

Even more important, as the BJS data explains, while the total number of people incarcerated in jails at any one time is reflected in the numbers above, jails reported 10.3 million admissions in 2019.<sup>6</sup> This suggests that ADP should not be the decisive factor in determining when and to whom rate caps and other policies should apply since rapid turnover and short durations of stay makes determining the population of any given carceral facility difficult. For example, the weekly turnover rate for those incarcerated in local jails nationwide was 53 percent, with incarcerated people spending an estimated average of 26 days in jail.<sup>7</sup> This rapid turnover reduces the amount of time that incarcerated people and their families have available to

<sup>5</sup> See Zhen Zeng & Todd D. Minton, “Jail Inmates in 2019,” Bureau of Justice Statistics, NCJ 255608, at 7 (Mar. 2021), <https://bjs.ojp.gov/content/pub/pdf/ji19.pdf> (“BJS 2019 Jail Report”).

<sup>6</sup> See *id.* at 1.

<sup>7</sup> See *id.* at 8.

understand or investigate the communications options available to them, meaning they are more likely to choose plans or services that are not the lowest cost.<sup>8</sup>

Further, the BJS jails report documents the structural racism in our justice systems which mean that unjust and unreasonable costs imposed on incarcerated populations translate into Commission pricing policies that are further harming people of color who are already over-incarcerated. For example, Black people were incarcerated at a rate (600 per 100,000) more than three times the rate for whites (184 per 100,000).<sup>9</sup> American Indians and Alaska Natives (“AIANs”) had a jail incarceration rate of 420 per 100,000, more than double the rate for whites.<sup>10</sup>

While the National Sheriffs’ Association argues that the size of jails dramatically impacts cost, evidence demonstrates otherwise. The Commission’s methodology for establishing permanent rate caps allows exceptionally higher rates to persist for jails with average daily populations less than 1,000, and the Commission has suggested that self-reported data from ICS providers disproves public interest advocates’ assertion that “size does not impact costs.”<sup>11</sup> However, analysis from the Prison Policy Initiative (“PPI”) reveals that facility size does not actually correlate to rates, and that many of the smallest facilities could set their rates at levels similar to those of the largest facilities.<sup>12</sup> PPI’s analysis showed it is also possible to have low rates regardless of facility size. There should be no exceptions to rate caps based on size. Instead,

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<sup>8</sup> See Prison Policy Initiative, State of Phone Justice, “Charges May Apply,” [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html](https://www.prisonpolicy.org/phones/state_of_phone_justice.html) (demonstrating the stress a family member feels to answer calls without understanding the costs).

<sup>9</sup> See BJS 2019 Jail Report at 1.

<sup>10</sup> See *id.* at 4.

<sup>11</sup> Fifth FNPRM at ¶ 48.

<sup>12</sup> Peter Wagner & Alexi Jones, “State of Phone Justice: Local jails, state prisons and private phone providers,” Prison Policy Initiative (Feb. 2019), [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html#consolidation](https://www.prisonpolicy.org/phones/state_of_phone_justice.html#consolidation) (last visited Sep. 27, 2021).

policies should diminish extremely high costs of telecommunications service by reining in price gouging by individual providers. Permanent rate caps should be determined based on an understanding of providers' actual costs and their exorbitant returns off of the incarcerated, not based on an indefinite factor like size of the facility.

Moreover, the Commission should take notice of the cost structures of digital calling services available in the competitive, non-carceral market. While market research demonstrates some difference between larger and smaller user populations in commercial product pricing, the competitive pricing structure in no way resembles the pricing structures used by jails or other carceral facilities. To take one example, Nextiva —a commercial VOIP provider—prices its service by the number of lines needed at a time.<sup>13</sup> The product is not priced by a client's number of employees, only the number of lines in use at a time. The pricing of these lines is not charged by minute. In a carceral institution, incarcerated people share phones so each phone would need only one line. Moreover, the pricing targeted to the small business marketplace also offers significant discounts to customers who can commit to longer service intervals – a much lower price for a three-year commitment than for a one-year commitment and lower prices for pre-paid compared with post-paid accounts. Nextiva, for example, charges \$24 per month per line for a contract offering between 20 and 99 lines for a three-year contract.<sup>14</sup> The price goes up to \$28 per line for 5-19 lines and down to \$22 per line for 100 or more lines.<sup>15</sup> The same company offers: unlimited calling, unlimited participants on voice and video conferencing, unlimited video conference recording and call recording, voice analytics and voicemail transcription and more

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<sup>13</sup> See Cameron Johnson, “How Much Does a VoIP Phone System Actually Cost?,” Nextiva Blog, <https://www.nextiva.com/blog/voip-cost.html> (last visited Sept. 24, 2021).

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

features for \$32.95 per line per month.<sup>16</sup> The Commission should compare these market-based products and prices when considering the reasonableness of the cost structure and data submitted by ICS providers. The Commission should also be sure it factors in the number of incarcerated people who are using the system at the same time, as well as the number of non-incarcerated users who are being served by a system (such as carceral personnel) in order to truly understand the differences in cost, if any, for jail size. These factors are particularly important because in the current, dysfunctional marketplace, purchasers of phone service do not have a strong incentive to identify the best deals. Even if they are not profiting off the service via a high commission, the vast majority of carceral institutions do not bear the cost of the phone system at all, imposing it instead on the incarcerated people and their families. The Commission should analyze the costs submitted to it based on whether an institution has an incentive to minimize the costs of calling. It may be that the structure and features required to apportion costs inflate the cost of a system irrationally, when instead the institution could absorb the cost or impose fees that more accurately reflect the present marketplace.

***B. The Commission Should Preempt Commissions Or Other Elements Of A Rate That Result In Unjust And Unreasonable Costs For Consumers.***

The Commission should preempt any commission payment or other practice which results in unjust and unreasonable rates for all consumers, whether they are incarcerated or whether they are communicating with incarcerated people.<sup>17</sup> The Commission's action supersedes state or local action via the Supremacy Clause of the U.S. Constitution.<sup>18</sup> In Section 201 of the Communications Act, Congress directed the Commission to set just and reasonable

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<sup>16</sup> See, e.g., Nextiva, "Plans and Pricing," <https://www.nextiva.com/nextiva-pricing.html> (last visited Sept. 24, 2021).

<sup>17</sup> See Fifth FNPRM at ¶ 314.

<sup>18</sup> See U.S. CONST. art. VI, cl. 2.

interstate rates. The Commission’s authority to preempt state and local actions inconsistent with its actions under Title II with respect to interstate telecommunications is unquestionably where the Commission’s preemptive authority is at its maximum.<sup>19</sup> Section 152 makes explicit the Commission’s authoritative jurisdiction with respect to the interstate communications at issue here.<sup>20</sup> Even where the Commission’s authority is far more attenuated, its decisions to preempt local governments’ authority with regard to local permitting approval, zoning, and cable franchising have been considered and upheld in the federal courts including the Supreme Court.<sup>21</sup> For example, the Communications Act explicitly preserves state and local authority with respect to wireless zoning and cable franchising and the Commission has nonetheless preempted such authority<sup>22</sup> — not in order to implement a plain language directive of Congress, but to facilitate deployment of advanced technology more quickly and at lower costs to industry than would occur if local authority were not preempted.<sup>23</sup> In this present case, the Commission’s failure to act under the Congressional mandate to ensure just and reasonable rates means that incarcerated consumers and their loved ones are suffering with higher rates, archaic technology and billing practices that would not be tolerated (and are not tolerated) for any other population.

The Commission should grant the Petition for Reconsideration filed by United Church of Christ, OC Inc. and Public Knowledge.<sup>24</sup> If it does not grant the points made in reconsideration,

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<sup>19</sup> See, e.g., *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 379–82 (1999); *Comcast Corp. v. FCC*, 600 F.3d 642, 645 (D.C. Cir. 2010).

<sup>20</sup> 47 U.S.C. §152; *La. Pub. Svc. Comm’n v. FCC*, 476 US 355 (1986).

<sup>21</sup> See *City of Arlington v. FCC*, 569 U.S. 290 (2013); *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020) cert den. 2021 WL 2637868 (June 28, 2021); *City of Eugene, Oregon v. Federal Communications Commission*, 998 F.3d 701 (6th Cir. 2021).

<sup>22</sup> See generally Chris Linebaugh & Eric Holmes, Congressional Research Service, “Stepping In: The FCC’s Authority to Preempt State Laws Under the Communications Act,” R46736 at 22-30, 35-36 (2021), <https://crsreports.congress.gov/product/pdf/R/R46736/2>

<sup>23</sup> See *id.*

<sup>24</sup> See Petition of Reconsideration of United Church of Christ, OC Inc. and Public Knowledge, WC Docket No. 12-375 (filed Aug. 27, 2021) (“UCC & PK Petition for Reconsideration”).

the Commission should consider those arguments in the context of the Further Notice. Specifically, the FCC should find that site commissions do not belong in the rate because they are the product of locational monopolies. The Commission should take a fresh look at the conclusions in the 2016 Reconsideration Order which incorrectly rejected the otherwise long-standing precedent about site commissions as locational monopoly payments.<sup>25</sup> As explained in prior filings, the D.C. Circuit’s opinion in *GTL v. FCC* is not to the contrary.<sup>26</sup>

**C. *The Costs Of Surveillance And Security Do Not Belong In Rates For Telecommunications Services.***

The Commission asks for “detailed comment on variables like facilities’ cost of enabling inmate calling services,” but many costs of security and surveillance are irrelevant to the cost of providing communication service, and therefore should be removed from any calculations for determining ICS rates for consumers. As Worth Rises, UCC OC Inc. and Public Knowledge explained to the Commission earlier this year, services like security and surveillance are procured in the interest of correctional facilities, not ICS consumers (e.g., incarcerated people and their loved ones). 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. For instance, Worth Rises pointed out that ICS providers have routinely introduced new security and surveillance services mid-contract that therefore are not associated with any increase in rates. Instead, it is a scheme to normalize the use of such technologies and then to later use these new services to justify higher rates. Facilities should not be able to recover the cost of non-communication-related services procured in their own interest

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<sup>25</sup> See *Ex Parte* Notice of Cheryl A. Leanza, United Church of Christ, OC Inc., and Al Kramer, Public Knowledge, WC Docket No. 12-375, at 1-2 (filed Mar. 28, 2021); UCC & PK Petition for Reconsideration at 10 (noting the Commission misconstrued *GTL v. FCC* and “failed to consider that it is within the FCC’s authority to conclude that no element of the facility belongs in the rate”).

<sup>26</sup> See *id.*

and imposed on ICS consumers, and the Commission therefore should not ask ICS providers and facilities to provide more information on costs of security and surveillance nonessential and irrelevant to the actual provision of communications services. The question of appropriate compensation rates for differences in officer, supervisor and other employee hours spent on various duties at prisons and jails is a question for facilities, to determine how they should compensate their workers, and should not involve the incarcerated and what they pay to communicate with their loved ones.

This is made all the more concerning when companies provide security and surveillance services that 1) no one asked for, 2) will eventually be absorbed into the already inflated and unacceptable security costs applied to the communications context, and 3) have a much broader impact than would be reasonable. ICS providers have actually been surveilling the incarcerated on their own dime and time. Securus, for example, records and monitors incarcerated people's telephone calls far beyond what is necessary for the security purposes alleged by the need to monitor these calls.<sup>27</sup> Recent reports reveal that the company allowed access to real-time location data for virtually any individual in the country, and the system lacks any safeguards to ensure that those obtaining this sensitive information have a warrant or proper consent for such use.<sup>28</sup> Securus funds this service through charging the incarcerated a 4 percent "Location Validation Fee," whether or not the service's location tracking capability is used for the call. While this gross violation of privacy is not the subject of this proceeding, it highlights how these practices fuel higher prices and how these higher prices apparently incentivize the development of even

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<sup>27</sup> See George Joseph & Debbie Nathan, "Prisons Across the U.S. Are Quietly Building Databases of Incarcerated People's Voice Prints," *The Intercept* (Jan. 30, 2019), <https://theintercept.com/2019/01/30/prison-voice-prints-databases-securus/>.

<sup>28</sup> See Jennifer Valentino-DeVries, "Service Meant to Monitor Inmates' Calls Could Track You, Too," *May 10, 2018, N.Y. Times*, <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>.

more ominous dragnet and unnecessarily invasive technologies or services. The company also charges the incarcerated per call for the use of voice verification technology that tracks voice biometrics to identify the incarcerated, though that service would be requested by incarceration facilities, not the end users.<sup>29</sup>

***D. The Commission Should Reject Including Ancillary Services When Calculating Permanent Rates.***

The Commission's decision to leave ancillary services as part of industry costs used in calculating interim rate caps is unfair to incarcerated individuals, who the Commission admits are already paying for those ancillary services when they pay for calling services, and are therefore now paying for the same service twice. The Commission reasons that ancillary services must remain in rate calculations because there is "no reliable way to exclude ancillary service costs from our provider-related rate cap calculations at this time" and because deducting revenues from ancillary services from the costs that go into the Commission's per-minute rate cap calculations would lower rate caps equally for all providers and therefore disproportionately affect those providers having the lowest ancillary service revenues. This is not a reason, however, to continue to permit rent-seeking behavior that forces users to pay twice for the same services: once in the rates they pay for regular calling services and again in the rates they pay for ancillary services. No provider, regardless of its size or how much it is earning from ancillary services, should benefit from revenues gathered by charging users for service they have already paid for. The Commission should reexamine its approach to ancillary service charges and immediately reduce ancillary service charge caps, rather than wait until having data to set rate

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<sup>29</sup> See Consolidated Comments of Petitioners, WC Docket No. 12-375 (filed Mar. 11, 2014), <https://ecfsapi.fcc.gov/file/7521090533.pdf>.

caps while providers are already recovering costs twice. The Commission has adopted fixed caps before and can do so again to ensure they are just and reasonable.

**E. *The Commission Should Reconsider How The Incarcerated Are Treated Uniquely Unfairly Compared To Other Consumers In The Traditional Telecommunications Marketplace.***

The Commission's acknowledgment that the incarcerated are captive consumers, dependent for communication with their families on just one service provider that faces no competitive pressure to lower rates or costs to the end user, is the basis on which the Commission needs to reconsider archaic business practices like charging people per minute rates for calls. Consumers today do not normally pay for calls based on per minute of use, but rather pay for service with set expectations on minutes available to use per month.<sup>30</sup> In fact, given that much of society today uses mobile broadband to communicate via video, messaging applications, and other options, retail plans typically offer unlimited text and calling minutes, with limits typically only on data usage. Given strides in technology and the way that phone service is normally provided in the telecommunications marketplace, the Commission should consider how state and local governments normally contract phone service and update service delivery for the incarcerated as per current standards.

**IV. THE COMMISSION SHOULD SUPPORT PERIODIC COLLECTION OF ACCURATE DATA ON ICS COSTS AND THE ICS MARKETPLACE.**

Commenters are in agreement with the Commission's recognition of the pressing need for greater transparency and accountability in data provided by the ICS providers, particularly on disaggregated cost data. We reiterate that both the interim and permanent caps must be informed by robust data collections and subsequently through the institution of a routine periodic data

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<sup>30</sup> See, e.g., "Compare our wireless plans," AT&T Wireless, <https://www.att.com/plans/wireless/> (last accessed Sept. 20, 2021).

collection with “clear, structured questions,” and that the Commission must “commit to reviewing that data through scheduled ratemaking proceedings, and adjust ICS rates accordingly.”<sup>31</sup> Such collections of individual providers’ data should also include a periodic assessment of the ICS marketplace as a whole further supported by independent sources of cost data. We advocate for close scrutiny of individual providers that submit anomalous data. The Commission should implement, at the very least, a triennial data collection and much of the data requested in the Fifth FNPRM should, in large part, come from ICS providers themselves.

The Commission inquires in this proceeding into the burden of certain reporting regimes on the ICS providers. Even setting aside providers’ long-term obfuscation of what ought to have been readily available or expected data, needless resistance that has led to protracted mandatory data collections, and the resulting burden imposed on incarcerated people and the people seeking to connect with them through unjustly and unreasonably high calling rates, the potential “burden” on providers is largely self-inflicted and should be discounted. Had these providers submitted the data, as requested, the burden going forward would have been minimal. It cannot be the case that regulated entities are permitted to continually submit insufficient data to the Commission, and that subsequent efforts to correct that deficiency are found to be burdensome.

## **V. CONCLUSION**

The Commission has before it an opportunity to address not only the injustice of unaffordable rates for incarcerated people—and those seeking to connect with them—but to address the doubly unjust barriers for incarcerated individuals with disabilities who may not have functionally equivalent access on top of those unaffordable rates. The Commission should continue these efforts but also reconsider several aspects which undergird the Fifth FNPRM and remain a barrier to lower permanent rates, including the unsupported distinction between

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<sup>31</sup> Comments of Public Interest Parties, WC Docket No. 12-375, at 15 (filed Nov. 23, 2020).

facilities based on their ADP that leaves many of those impacted outside of the benefit of the new caps, further delays in lowering rates while waiting for providers to report data, and additional security and ancillary costs.

Respectfully Submitted,

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