

REDACTED – FOR PUBLIC INSPECTION

July 12, 2023

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VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, WC Docket No. 23-62; *Rules for Interstate Inmate Calling Services*, WC Docket No. 12-375.

Dear Ms. Dortch:

The Wright Petitioners herein submit a REDACTED version of reply comments in response to the Commission’s Notice of Proposed Rulemaking.¹ The Wright Petitioners are also submitting a CONFIDENTIAL version of these reply comments pursuant to the Protective Orders adopted for the above-captioned dockets.² Encrypted electronic copies of the CONFIDENTIAL filing are being sent via email to the members of the Commission staff listed below.

Please contact me if you have any questions or require any additional information.

Sincerely,
/s/ Gregory R. Capobianco
Gregory R. Capobianco
Counsel for The Wright Petitioners

¹ *In re Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, Notice of Proposed Rulemaking and Order, WC Docket Nos. 23-62, 12-375, FCC 23-19 (rel. Mar. 17, 2023).

² *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Protective Order, 28 FCC Rcd 16954 (WCB 2013) (“2013 Protective Order”); *see also In re Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, Protective Order, WC Docket Nos. 23-62, 12-375, DA 23-298 (rel. Apr. 5, 2023) (“2023 Protective Order”). The 2023 Protective Order incorporates by reference into WC Docket No. 23-62 all acknowledgements filed pursuant to the 2013 Protective Order. 2023 Protective Order ¶ 6.

Marlene H. Dortch

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Enclosures

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

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

**REPLY COMMENTS OF
THE WRIGHT PETITIONERS
BENTON INSTITUTE FOR BROADBAND & SOCIETY
NATIONAL CONSUMER LAW CENTER (ON BEHALF OF ITS LOW-INCOME
CLIENTS)
PRISON POLICY INITIATIVE
PUBLIC KNOWLEDGE**

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

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**REPLY COMMENTS OF THE WRIGHT PETITIONERS, BENTON INSTITUTE FOR
BROADBAND & SOCIETY, NATIONAL CONSUMER LAW CENTER (ON BEHALF
OF ITS LOW-INCOME CLIENTS), PRISON POLICY INITIATIVE, AND PUBLIC
KNOWLEDGE**

The Wright Petitioners,¹ Benton Institute For Broadband & Society, the National Consumer Law Center (on behalf of its low-income clients), Prison Policy Initiative, and Public Knowledge (the “Public Interest Parties”), submit these reply comments in the above-captioned proceedings to urge the Federal Communications Commission (“Commission”) to ensure that rates and charges for incarcerated people’s communications services (“IPCS”) are just and reasonable.

¹ The Wright Petitioners—the late Martha Wright, Ulandis Forte, Ethel Peoples, Laurie Lamancusa, Dedra Emmons, Charles Wade, Earl Peoples, Darrell Nelson, and Jackie Lucas—brought suit in the United States District Court for the District of Columbia against Corrections Corporation of America in 2000, seeking to set aside exclusive telephone contracts among the private prisons and certain telephone companies. The matter was subsequently referred to the Commission in August 2001. Since 2003, these petitioners have actively petitioned the Commission for regulation of inmate calling services through The D.C. Prisoners’ Legal Services Project, Inc. at the Washington Lawyers’ Committee for Civil Rights and Urban Affairs.

I. INTRODUCTION AND SUMMARY.

Commenters agree that in passing the Martha Wright-Reed Act,² Congress decisively responded to the D.C. Circuit's *Global Tel*Link v. FCC* decision³ by authorizing the Commission to reform the rates and charges for any audio and video service and thus removing any jurisdictional gaps identified by the court. The Commission should use this authority to bring relief to IPCS consumers that have waited too long for relief from unreasonable rates and charges. Against this backdrop, the Commission must reject calls from IPCS providers and the National Sheriffs' Association ("NSA") to ignore the changes the MWRA imposes and retain the status quo. Instead, the Public Interest Parties urge the Commission to seize the opportunity to bring meaningful relief to IPCS users by adopting the following actions:

First, the record demonstrates broad agreement that Congress expanded the Commission's authority to broadly reform all video and audio IPCS rates and charges, and the Commission must do so. The Commission should reject attempts by some commenters to unduly restrict its authority to adopt reforms.

Second, the record supports interpreting the term "industry-wide" in the MWRA to mean the average costs of the communications industry, not limited to average costs of IPCS providers. This broader interpretation is consistent with Congress's intent and will help ensure that rates and charges are just and reasonable, and that providers are fairly compensated.

Third, the record supports applying the "used and useful" standard to ensure that costs that do not directly benefit end users or are unrelated to IPCS are excluded from rates paid by consumers. This approach is consistent with longstanding precedent.

² Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 ("MWRA" or "Act" or "Martha Wright-Reed Act").

³ See *Global Tel*Link v. FCC*, 866 F.3d 397, 402 (D.C. Cir. 2017) ("*GTL*").

Fourth, consistent with previous reforms in the universal service context, the Commission should utilize a model carrier approach to reform IPCS rates under the MWRA. A model carrier approach avoids challenges associated with individual costs, including inflated costs, and will promote efficiency while ensuring just and reasonable rates and fair compensation for providers.

Fifth, the Commission should not include site commission payments in any rate paid by IPCS consumers because they are not “used and useful” and thus should not be included in a just and reasonable rate. The MWRA allows the Commission to take a fresh look at site commissions and determine if they are “used and useful.” Contrary to claims by Securus and GTL, the *GTL* decision does not force the Commission to include site commission payments in any rate cap, and the Commission has ample authority to both prohibit their inclusion in IPCS contracts and preempt state and local laws that require them.

Finally, the Commission must act to lower IPCS rates because there is no basis for simply adopting as permanent the current rate caps, which were developed pursuant to an entirely different statutory scheme.

II. THE RECORD SUPPORTS AN EXPANSIVE VIEW OF THE COMMISSION’S AUTHORITY UNDER THE MARTHA WRIGHT-REED ACT.

A wide array of stakeholders support the Commission’s view that the MWRA confers “broad, plenary authority” to regulate the rates and charges for any audio or video communications service that incarcerated people presently use or may use to communicate with individuals outside their correctional institution.⁴ Pay Tel, Securus, and NCIC Inmate Communications agree that the Act significantly expands the Commission’s authority and

⁴ *In re Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, Notice of Proposed Rulemaking and Order, WC Docket Nos. 23-62, 12-375, FCC 23-19 ¶¶ 11, 17, 29, 32 (rel. Mar. 17, 2023) (“*NPRM*”).

eliminates any jurisdictional gaps and loopholes.⁵ State and local officials, likewise, agree that the Act authorizes the Commission to regulate all audio and video IPCS, current and future, regardless of the technology used.⁶ Advocacy groups and other stakeholders advance similar positions, explaining how the Commission’s broad interpretation comports with the text, purpose, and history of the MWRA and highlighting the myriad benefits that flow from reforming the IPCS marketplace.⁷

⁵ Comments of Pay Tel Communications, Inc. at i, 5-6, WC Docket Nos. 23-62, 12-375 (May 8, 2023) (“Pay Tel Comments”) (observing that the Act “expand[s] the scope of Commission authority” by expressly granting the Commission authority over intrastate IPCS as well as audio and video IPCS regardless of the technology used, thereby “enabling the Commission to implement comprehensive reform”); Comments of Securus Technologies, LLC at i, 1, 4, 9, WC Docket Nos. 23-62, 12-375 (May 8, 2023) (“Securus Comments”) (repeatedly stating that “Securus agrees with the Commission’s assessment that the Act ‘fundamentally expands’ the Commission’s authority” and noting that the Act does not confer authority to regulate video streaming services (quoting *NPRM* ¶ 13)); Comments of NCIC Inmate Communications at i, 4, WC Docket Nos. 23-62, 12-375 (May 8, 2023) (“NCIC Comments”) (“agree[ing] with the Commission that the Martha Wright-Reed Act expands the Commission’s authority under Section 276 of the Communications Act and moots any jurisdictional concerns raised in *GTL v. FCC*”).

⁶ Comments of the California Public Utilities Commission and the People of the State of California on the FCC’s Notice of Proposed Rulemaking and Order at 1, 3, WC Docket Nos. 23-62, 12-375 (May 8, 2023) (“CPUC Comments”) (affirming that “the FCC correctly interprets the statute” as “expand[ing] the FCC’s authority” and “agree[ing] with the FCC that communications services should encompass all types of calling devices”); California State Senator Josh Becker Comments at 1-2, WC Docket Nos. 23-62, 12-375 (May 8, 2023) (explaining that the Act “extend[s] financial stability to millions of Americans” by “remov[ing] the FCC’s limitations on regulating audio and video communications”).

⁷ Civil Rights Corps Comments at 1, 3-6, WC Docket Nos. 23-62, 12-375 (May 8, 2023) (citing the MWRA’s “language” and “intended goal,” as well as the harms caused by high rates, to show that the Act “expands the Commission’s authority” and “should be interpreted to extend to every audio or visual method that incarcerated people currently use or may use in the future to communicate, regardless of the physical location of the person with whom they are communicating”); Color of Change Comments at 1-2, 7-8, WC Docket Nos. 23-62, 12-375 (May 8, 2023) (agreeing that “the FCC’s regulations should encompass current and future communications services” in order to realize the “measurable positive impacts on public safety and benefit[] the families of those incarcerated”); Opening Comments of Stephen A. Raher on Notice of Proposed Rulemaking at 1-2, 7, 9, WC Docket Nos. 23-62, 12-375 (May 8, 2023) (“Stephen A. Raher Comments”) (explaining that “the text and legislative history of the Wright-Reed Act indicate Congressional intent to effectuate broad regulation of rates and practices in the [IPCS] market, regardless of technological distinctions”); Comments of Electronic Privacy Information Center at 1-3, 9, WC Docket Nos. 23-62, 12-375 (May 8, 2023) (“EPIC Comments”) (“applaud[ing] the Commission for reading the Martha Wright-Reed Act to confer broad authority to regulate prison telecommunications” and affirming that “[t]he FCC now has explicit statutory authority to regulate ... video calls and other telecommunications regardless of the technology used”); *accord* Comments of the Wright Petitioners et al. at 2-9, WC Docket Nos. 23-62, 12-375 (May 8, 2023) (“Public Interest Parties Comments”) (“With the passage of the MWRA, Congress unambiguously has made clear that the Commission has broad authority to adopt reforms to ensure that *all* rates and charges for ‘any audio or video communications service’ are just and reasonable.”).

As part of this expansion of the Commission’s authority, Congress amended Section 153 of the Communications Act to define “advanced communications services” to include “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.”⁸ As explained in opening comments, there is no basis for extending the limiting phrase “used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held” to any of the other advanced communications services subject to the Commission’s authority.⁹ The NSA, however, argues that the limiting phrase should be applied to all five components of the term “advanced communications services.”¹⁰ The Commission should reject this interpretation as it is not supported by the plain language of the MWRA, Congressional intent, or canons of statutory interpretation. Instead, the limiting phrase is properly understood as applying exclusively to “any audio or video communications service”¹¹ and not to every type of advanced communications service listed in the statute.

The phrase appears only in Section 153(1)(E) immediately following “any audio or video communications service,” and there is no language in either the Communications Act or the MWRA extending this limitation to the other categories of advanced communications services in Sections 153(1)(A)-(D).¹² The NSA’s proposition that this limiting phrase should be interpreted to apply to the other categories of services in Sections 153(1)(A)-(D) as well, therefore, violates the “sensible” grammatical rule that “a limiting clause or phrase . . . should ordinarily be read as

⁸ MWRA, § 2(b); 47 U.S.C. § 153(1)(E).

⁹ Public Interest Parties Comments at 6-7.

¹⁰ Comments of National Sheriffs’ Association at 5, WC Docket Nos. 23-62, 12-375 (May 8, 2023) (“NSA Comments”).

¹¹ *NPRM* ¶ 31; 47 U.S.C. § 153(1)(E).

¹² *NPRM* ¶ 31.

modifying only the noun or phrase that it immediately follows.”¹³ This rule makes especially good sense where, as here, no comma separates the limiting phrase from the directly preceding term (“any audio or video communications service”).¹⁴ Construing the limiting phrase to modify the other advanced communications services listed in Sections 153(1)(A)-(D) would also violate the well-established canon against surplusage. As the NSA itself acknowledges, each of the other services identified in Sections 153(1)(A)-(D) “plainly fit[s] within the scope” of “any audio or video communications service” in Section 153(1)(E).¹⁵ For that provision to be given effect, then, the limiting phrase must apply to it alone; otherwise, the provision would be rendered superfluous.¹⁶ Finally, the NSA’s construction ignores what other commenters applaud—the MWRA’s “unequivocal expansion” of the Commission’s jurisdiction “to ensure just and reasonable charges” for IPCS.¹⁷ Reading Section 153(1)(E)’s limiting phrase to restrict the communications services subject to the Commission’s ratemaking authority would, therefore, not only distort the statute’s plain language, but also contravene clear congressional intent.¹⁸

¹³ *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003); accord William Strunk Jr. & E.B. White, *The Elements of Style* 28, 30 (4th ed. 2000) (“The position of the words in a sentence is the principal means of showing their relationship,” and “[m]odifiers should come, if possible, next to the words they modify.”).

¹⁴ See, e.g., *Osorio v. State Farm Bank, F.S.B.*, 746 F.3d 1242, 1257-58 (11th Cir. 2014); *Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V.*, 651 F.3d 329, 335-36 (2d Cir. 2011); *United States v. Pritchett*, 470 F.2d 455, 459 (D.C. Cir. 1972); 2A Norman Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 47:33 (7th ed. 2022); see also 2A Singer & Singer, *Sutherland Statutes and Statutory Construction* § 46:6 (“Where a legislature includes particular language in one section of a statute but omits it from another section of the same or a related act, it generally acts intentionally and purposely in the disparate inclusion or exclusion.”).

¹⁵ NSA Comments at 5; 47 U.S.C. § 153(1)(E).

¹⁶ See *Corley v. United States*, 556 U.S. 303, 314 (2009) (rejecting a reading “at odds with one of the most basic interpretive canons, that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant” (internal quotation marks omitted)).

¹⁷ *NPRM* ¶ 29; MWRA pmb1.

¹⁸ Moreover, as our comments explain, the term “outside the correctional institution” can plausibly be interpreted to mean both “not physically with-in the structure,” as well as “not held within the institution.” See Public Interest Parties Comments at 8.

III. THE RECORD CONFIRMS THAT “INDUSTRY-WIDE” SHOULD REFER TO ALL PROVIDERS OF TELEPHONE AND ADVANCED COMMUNICATIONS SERVICES.

The MWRA permits 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 setting just and reasonable rates for IPCS.¹⁹ As the Public Interest Parties explain in our opening comments, “industry-wide average costs” should be interpreted in this context to encompass the average costs for the broader communications industry, as opposed to just for the provision of IPCS.²⁰ The New York Public Service Commission agrees that adopting a definition of “industry-wide” that covers all providers of telephone and advanced communications service can help ensure just and reasonable rate caps which take into consideration all providers of IPCS, regardless of platform.²¹

In passing the MWRA, Congress sought to respond to the D.C. Circuit’s decision in *GTL*, which held that the Commission could not use industry-average cost data in setting IPCS rate caps.²² Not only did Congress, in response, explicitly authorize the Commission to use “industry-wide average costs” to determine just and reasonable rates for IPCS in the MWRA, it further made clear that the Commission is permitted to consider “industry-wide average costs of telephone service and advanced communications services.”²³ Both the legislative history and statutory text show that Congress intended for the term “industry-wide average costs” to be

¹⁹ Martha Wright-Reed Act § 3(b)(1).

²⁰ See Public Interest Parties Comments at 16-19.

²¹ See, e.g., Comments of the New York Dep’t of Public Service at 1-2, WC Docket No. 23-62 (May 8, 2023).

²² See Martha Wright-Reed Act pmb.; 168 Cong. Rec. H10028 (daily ed. Dec. 22, 2022) (statement of Rep. Rush) (stating that the intent of the MWRA is to “confirm the FCC’s regulatory power to protect all prison and jail phone calls” after the *GTL* decision); *GTL*, 866 F.3d at 414-15.

²³ Martha Wright-Reed Act § 3(b)(1).

interpreted to encompass the broader communications industry. To the extent that there is any ambiguity in the term “industry-wide average costs,” the Commission has ample authority to define the term to include the communications industry, not just IPCS providers.²⁴

The Commission should decline to adopt a narrower interpretation of “industry-wide.”²⁵ First, there is no evidence that providing a video or audio call itself is novel or unique to IPCS.²⁶ To the extent IPCS providers have any costs that could not be accounted for using industry-wide averages, the Brattle Group’s efficient carrier model could easily account for them. Moreover, commenters do not explain why using average costs of the communications industry would be unlawful or otherwise prevent just and reasonable rates. To the contrary, as the Public Interest Parties and the Brattle Group have explained, using industry-wide average costs of the communications industry to set IPCS rate caps would allow the Commission to model an efficient provider and still fully account for any necessary additional costs specific to the IPCS industry and uniquely associated with the provision of IPCS services.²⁷ Interpreting “industry-wide” to encompass the broader communications industry, thus, is consistent with the statute and enables IPCS providers to recover costs necessary for IPCS.

²⁴ See *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). Moreover, in light of the MWRA, Congress has plainly delegated to the Commission authority to make such determinations. Cf. *West Virginia v. EPA*, 142 S. Ct. 2587, 2605 (2022) (providing that an agency has the authority to exercise powers “of vast economic and political significance” when Congress “speak[s] clearly” and “plainly” in granting that authority (internal quotation marks omitted)).

²⁵ See NSA Comments at 8 (arguing that “industry-wide” should refer to only the IPCS industry because the costs of IPCS are different from the costs of services provided to non-incarcerated people); see also NCIC Comments at 12-14.

²⁶ See Comments of Worth Rises at 12-13, WC Docket Nos. 23-62, 12-375 (May 8, 2023) (“Worth Rises Comments”) (discussing the use of off-the-shelf advanced communication services).

²⁷ See Public Interest Parties Comments at 20-22; see *infra* Sec. IV.

IV. THE USED AND USEFUL STANDARD SHOULD GUIDE THE COMMISSION'S ANALYSIS OF COSTS THAT MAY BE INCLUDED IN RATES CHARGED TO IPCS CONSUMERS.

The Public Interest Parties' opening comments explain that the incorporation of Section 201(b)'s just and reasonable standard into Section 276 also imports the Commission's "used and useful" framework, which serves as a protection against inefficiencies and abuse.²⁸ Some commenters argue that the "used and useful" standard does not apply because it was used to ensure compensation to regulated entities, and is ill-suited for application in the context of site commissions and the competitive IPCS market.²⁹ Such arguments are a red herring. Nothing prevents the application of the used and useful standard, which is part of the process to determine whether rates are just and reasonable, to IPCS. Indeed, the standard is critical to determining whether certain costs are "necessary" as directed by Congress.

It is well-settled under Commission precedent that "just and reasonable" ratemaking requires the application of the Commission's "used and useful" analysis. The primary inquiry for determining whether a cost is "used and useful" in the context of "just and reasonable" ratemaking for IPCS is, thus, whether the cost is "primarily for the benefit of the carrier."³⁰ In other words, providers should not be allowed to recover costs that primarily benefit themselves rather than the end users. With the MWRA, there is no question that IPCS providers are

²⁸ See Public Interest Parties Comments at 10-11; see also 47 U.S.C. § 201(b); Worth Rises Comments at 3; Opening Comments of United Church of Christ Media Justice Ministry and Public Knowledge at 14, WC Docket Nos. 23-62, 12-375 (May 8, 2023) ("UCC/PK Comments"); *NPRM* ¶ 20 ("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."). We specifically recommended that the Commission should evaluate whether safety and security costs are "necessary" pursuant to the Commission's used and useful standard. Public Interest Parties Comments at 11 n.39.

²⁹ See Comments of Global Tel*Link Corporation d/b/a Viapath Technologies at 6, WC Docket Nos. 23-62, 12-375 (May 8, 2023) ("GTL Comments"); Securus Comments at 25-32.

³⁰ See *NPRM* ¶ 21 & n.68 (internal quotation marks omitted).

“regulated entities” and given the abuses, the Commission must ensure that ratepayers are not “forced to pay a return except on investment which can be shown directly to benefit them.”³¹

Given the long history of unreasonable charges and fees imposed on IPCS consumers, the “used and useful” standard helps address the very issue that Congress intended to address with the MWRA—unreasonable rates charged by IPCS providers which force incarcerated persons to pay for costs that they do not derive a direct benefit from.³²

V. THE COMMISSION SHOULD ADOPT A MODEL CARRIER APPROACH TO PROMOTE EFFICIENCY WHILE ENSURING JUST AND REASONABLE RATES.

The Public Interest Parties agree with the Commission that Congress passed the MWRA to change the “central focus” of the Commission’s ratemaking authority and obligation under Section 276(b)(1)(A) from ensuring that service providers are “fairly compensated” for completed calls to protecting both consumers’ and providers’ right to just and reasonable rates.³³ Congress made this focus on “just and reasonable” rates clear by deleting language that providers had to be “fairly compensated” for “each and every” completed call, and requiring instead that the Commission ensure that “providers are fairly compensated, and all rates and charges are just and reasonable.”³⁴ As commenters have pointed out, the move from “each and every completed

³¹ See *In re Rates for Interstate Inmate Calling Services*, Third Report & Order, Order on Reconsideration and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519, 9576-77 ¶ 129 (2021) (“2021 IPCS Order”) (“Equally central to the used and useful concept, however, is the 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.” (quoting *Am. Tel. & Tel. Co.*, Phase II Final Decision and Order, 64 F.C.C.2d 1, 47, ¶ 112 (1977))).

³² Securus acknowledged that an “aspect of the use[d] and useful framework” is to prevent recovery by providers of costs that do not directly benefit the ratepayer, but asked the Commission to nevertheless refrain from applying this concept to regulate the recovery of site commissions because site commission payments are operating expenses rather than investments. Securus Comments at 31-32. This argument, once again, distorts the clear applicability of the “used and useful” concept in the IPCS context by focusing on only the version of the concept as it is applied in the rate of return regulation context.

³³ *NPRM* ¶ 14.

³⁴ Martha Wright-Reed Act, § 2(a)(1); 47 U.S.C. § 276(b)(1)(A).

call” to “averages” as well as amending “fairly compensated” to “just and reasonable” is a direct response to the *GTL* decision.³⁵

To implement these fundamental changes in law, the Commission should adopt a methodology consistent with the Brattle Group’s model carrier approach, outlined in the opening comments³⁶ and further developed in the attached Brattle Reply Report in Appendix A,³⁷ which discusses the benefits of developing such a model. The MWRA’s requirement that rates and charges be “just and reasonable” while providers are “fairly compensated” is consistent with using a model carrier approach.

The Commission has used a model carrier approach in other contexts because it encourages efficiency and does not compensate inefficient providers that may have inflated costs. For example, the Commission has developed a forward-looking efficient carrier in the universal service cost model context to move away from embedded costs and create a more efficient way of distributing support.³⁸ Using such an approach comes with other key benefits, including administrative simplicity.

The Brattle Reply Report explains how the Commission could develop a model carrier to reform IPCS rates and charges. Under this proposal, rates would be based on five modules: telecom costs, facility costs, overhead costs, security costs, and allowable margin.³⁹ Given the

³⁵ See Stephen A. Raher Comments at 2-3; Public Interest Parties Comments at 11.

³⁶ Public Interest Parties Comments at 20-22.

³⁷ Appendix A (“Brattle Reply Report”).

³⁸ See, e.g., *In re Connect America Fund*, Report and Order, Order and Order On Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3090 ¶ 4 (2016) (establishing a “new forward-looking, efficient mechanism for the distribution of support in rate-of-return areas”); *In re Connect America Fund*, Report and Order, 29 FCC Rcd 3964, 3966-67 ¶¶ 3-7 (2014) (summarizing the Commission’s efforts in implementing in the USF auction context a cost model to estimate “the forward-looking economic costs of an efficient wireline provider at a granular level – census block or smaller – in all areas of the country”).

³⁹ See Brattle Reply Report ¶ 6.

Commission’s authority to use “industry-wide average costs,” this approach uses the average costs of providing voice and video communication services for small, medium, and large facilities in the non-IPCS context and then layers on any IPCS-specific costs, as appropriate, to create a model IPCS carrier.⁴⁰ The modules can be adjusted to account for facility size and other attributes as the Commission deems necessary,⁴¹ and providing for an allowable margin satisfies the statutory requirement to ensure fair compensation. This gives the Commission the necessary flexibility to meet the statutory requirement to ensure that only “used and useful” costs are included and that all rates and charges are “just and reasonable.” To ensure that providers are fairly compensated, the Commission could also grant waivers in limited circumstances.

VI. THE COMMISSION SHOULD PROHIBIT AND PREEMPT SITE COMMISSIONS.

The Commission should prohibit site commissions and preempt state and local laws that require them. As the Public Interest Parties, California Public Utility Commission (“CPUC”), Electronic Privacy Information Center (“EPIC”), and others explain, site commissions both impede the Commission’s ability to set “just and reasonable rates” and may prevent IPCS providers from being “fairly compensated” for the services that they provide—both requirements under the MWRA.⁴² The Act was Congress’s decisive response to *GTL*,⁴³ and the Commission has both the opportunity and duty to evaluate site commissions under this new statutory framework.

⁴⁰ *See id.* ¶¶ 14-24.

⁴¹ *See id.* ¶ 2.

⁴² Public Interest Parties Comments at 24-28; CPUC Comments at 4-6; UCC/PK Comments at 12-14; Securus Comments at 24-25.

⁴³ Public Interest Parties Comments at 3, 24-25.

A. Ensuring “Just and Reasonable” Rates for IPCS Requires Excluding Recovery of Site Commissions.

Under the “used and useful” analysis, IPCS consumers should not be forced to pay for any portion of site commissions that does not benefit them.⁴⁴ As payments made by IPCS providers to carceral facilities or state authorities as part of the provider’s service agreement with such parties,⁴⁵ site commissions render little cognizable benefits to IPCS consumers. In fact, as the Commission has noted and many commenters agreed, site commission payments tend to result in higher rates for IPCS consumers.⁴⁶ Instead of benefiting consumers, providers use these payments as leverage to help secure contracts with correctional authorities.⁴⁷

Not only does including site commission payments in consumer rates contradict the statutory requirement of setting “just and reasonable” rates, rent-seeking site commissions also distort the market. As Securus notes, site commissions distort the competitive bidding process in the IPCS industry, resulting in less revenue for providers and higher rates for consumers.⁴⁸ Although site commissions artificially inflate rates for consumers, this inflation does not result in higher revenues for providers. The Commission should remove these distorting forces to allow

⁴⁴ *In re Am. Tel. & Tel. Co.*, Phase II Final Decision and Order, 64 F.C.C.2d 1, 46-47 ¶¶ 111-112 (1977).

⁴⁵ *NPRM* ¶ 5.

⁴⁶ *See In re Rates for Interstate Inmate Calling Services*, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8521 ¶ 101 (2020) (“Allowing inmate calling services providers to treat all their site commission payments as ‘costs’ would almost inevitably result in unjust and unreasonably high rates for incarcerated individuals and their loved ones to stay connected.” (internal quotation marks omitted)); EPIC Comments at 4 (presenting evidence that facilities who do not charge site commissions have “some of the lowest prices” for e-messaging); Securus Comments at 3 (describing site commissions as a “major driver of consumer cost”).

⁴⁷ *See* Securus Comments at 14 n.34.

⁴⁸ *See* Securus Comments at 3, 24; *see also* Brattle Report ¶¶ 42-46, Appendix A to Public Interest Parties Comments (“Brattle Report”).

for a more efficient IPCS market, ensure fairer compensation for providers, and lower rates for consumers.⁴⁹

Some IPCS providers and the NSA claim that site commissions are used to pay for necessary security features unique to the IPCS environment,⁵⁰ but the MWRA directs the Commission to only “consider costs associated with any safety and security measures necessary to provide” IPCS.⁵¹ Given the evidence that site commissions are *not* related to real costs incurred by carceral facilities,⁵² the Commission should not include such payments in whole. In the event that the Commission does include site commission payments in setting future rate caps, the Commission should ensure that only those portions incurred by IPCS providers that directly benefit consumers are considered.

Finally, claims that the *GTL* decision requires the inclusion of site commissions in the calculation of rate caps are incorrect.⁵³ First, this argument ignores the expansion of the Commission’s authority under the MWRA altogether. As mentioned above, Congress passed the MWRA as a legislative response to *GTL*, and gave the Commission broader discretion and more authority to set IPCS rates.⁵⁴ The Commission is empowered under the MWRA to decide which portions of site commissions, if any, should be recoverable through IPCS rates. And, in any event, the arguments overstate the impact of *GTL*: *GTL* held only that the Commission could not

⁴⁹ To the extent that the Commission continues to permit the inclusion of site commissions in IPCS rates and charges, the Public Interest Parties agree with commenters that support capping the recovery of such payments at the lowest amount that can be legitimately considered a component of a just and reasonable rate. *See* CPUC Comments at 5; Stephen A. Raheer Comments at 16-17; UCC/PK Comments at 8-9; EPIC Comments at 4.

⁵⁰ *See, e.g.*, NSA Comments at 8; *GTL* Comments at 8; *see also* Securus Comments at 33-34.

⁵¹ Martha Wright-Reed Act § 3(b)(2) (emphasis added).

⁵² *See, e.g.*, Stephen A. Raheer Comments at 10.

⁵³ *See* *GTL* Comments at 8-9.

⁵⁴ *Id.*; UCC/PK Comments at 7 (“Senator Duckworth described it as intended to address the court decision which deprived the FCC of authority to take action.”).

“categorically exclude” site commission payments from IPCS rate calculation *without a reasonable justification*.⁵⁵

B. The Commission Has the Authority to Prohibit Site Commissions in IPCS Contracts.

The Public Interest Parties agree with commenters that the Commission should prohibit site commissions in IPCS.⁵⁶ Disallowing IPCS providers from entering contracts that require site commissions would be the simplest and most wide-reaching method to ensure that IPCS rates are just and reasonable and fairly compensate providers, and would leave no question whether different types of carceral facilities, privately-owned or otherwise, could use site commissions to unjustly profit off of IPCS consumers.

As our comments explain, the MWRA expanded the Commission’s already-broad authority to ensure IPCS providers’ practices are “just and reasonable.”⁵⁷ This authority extends to forbidding IPCS providers to enter contracts featuring site commissions if the Commission finds that requiring such payments is an unjust and unreasonable practice.⁵⁸ The Commission need not have jurisdiction over the counterparty in such contracts to regulate in this manner.⁵⁹ In fact, IPCS providers themselves have observed that the Commission had ample authority under Section 276 to prohibit site commissions, even before the passage of the MWRA.⁶⁰ The record is replete with the negative and unjust effects of site commission payments. Accordingly, the

⁵⁵ Stephen A. Rahe Comments at 3 (citing *GTL*, 866 F.3d at 412-14).

⁵⁶ See Securus Comments at 24; EPIC Comments at 4; UCC/PK Comments at i.

⁵⁷ Public Interest Parties Comments at 9-16; 47 U.S.C. § 276.

⁵⁸ Public Interest Parties Comments at 25 n.98 (citing rules that prohibit providers from entering into certain types of revenue sharing agreements with third parties).

⁵⁹ *Id.*

⁶⁰ See, e.g., Letter from Andrew D. Lipman, Counsel for Inmate Calling Solutions, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (Apr. 8, 2015).

Commission should declare that it is an unjust and unreasonable practice for IPCS providers to enter exclusive contracts with correctional authorities or carceral facility operators that require the payment of site commissions.

C. The Commission Has the Authority to Preempt State and Local Laws that Require Site Commissions.

The record contains support from a variety of stakeholders urging the Commission to preempt state and local laws that require site commissions.⁶¹ Section 276 of the Communications Act gives the Commission the authority to preempt state requirements that are “inconsistent with the Commission’s regulations.”⁶² The Commission should find requiring site commission payments to be an unreasonable practice in the provision of IPCS service, and as such, preempt any state or local laws that require them.

Further, as explained in the Public Interest Parties’ opening comments, Section 253 provides the Commission with an additional source of authority to preempt state or local statutes that “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”⁶³ Consistent with Commission precedent, an ordinance that materially inhibits the ability of “any competitor or potential competitor to compete in a fair

⁶¹ See Securus Comments at 24; Stephen A. Raheer Comments at 16-17; UCC/PK Comments at 20-21.

⁶² 47 U.S.C. § 276(c). This section does not, however, require that the Commission preempt state and local regulations that set IPCS rates lower than the caps that the Commission ultimately adopts, as some IPCS providers advocate. See, e.g., Pay Tel Comments at 18-21; Securus Comments at 42-44. As the Public Interest Parties explain in opening comments, the Commission should clarify that its rate caps will act as a ceiling, not a floor, and preempt only those intrastate rates that are higher than the Commission’s caps. See Public Interest Parties Comments at 13; see also CPUC Comments at 8 (explaining that “states and local governments must not be preempted from adopting intrastate rates which are lower than the rates adopted by the FCC”); Stephen A. Raheer Comments at 13. While the Commission does have plenary authority of intrastate rates, lower rates are not inconsistent with federal regulation, and, in fact, would be consistent with the Commission’s past approach. See *2021 IPCS Order*, 36 FCC Rcd at 9617 ¶ 217 (“To the extent that state law allows or requires providers to impose rates or fees lower than those in our rules, that state law or requirement is specifically not preempted by our actions here.”).

⁶³ 47 U.S.C. § 253(a), (d).

and balanced legal and regulatory environment” may be preempted, even if it does not present an “insurmountable barrier.”⁶⁴ Site commissions distort the market, creating a “pay-to-play” atmosphere that discriminates against smaller IPCS providers and materially inhibits their ability to compete.⁶⁵ The Public Interest Parties agree with Securus that the Commission should “take the lead and tackle the [site commission] issue head on through preemption of site commissions.”⁶⁶

VII. MAKING THE CURRENT RATE CAPS PERMANENT WOULD NOT MEET THE COMMISSION’S OBLIGATIONS UNDER THE MWRA.

Finally, there is no basis for GTL’s suggestion that the current rate caps, which the Commission adopted in 2021, already satisfy the MWRA requirements.⁶⁷ The Public Interest Parties urge the Commission to reject this proposal, which would read the changes that the MWRA made to Section 276 out of the statute, and contradict Congress’s intent to promote reduced IPCS rates. As the Commission has noted, Congress passed the MWRA to make IPCS more affordable for consumers.⁶⁸ This intent to reduce rates is not only well-documented in the

⁶⁴ *In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088, 9092-93, 9102-03 ¶¶ 16, 35 (2018), *review granted, vacated in part sub nom. City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020).

⁶⁵ See Public Interest Parties Comments at 27; Brattle Report ¶¶ 42-46.

⁶⁶ Securus Comments at 24.

⁶⁷ GTL Comments at 8-9; *see also 2021 IPCS Order*, 36 FCC Rcd 9519.

⁶⁸ *NPRM* ¶ 14. The Commission should also reject NCIC’s suggestion that the Commission use the Universal Service Fund (“USF”) to subsidize IPCS providers. *See* NCIC Comments at 5-6. There is nothing in the statute to suggest that compensating IPCS providers in this way would be consistent with universal service principles. *See generally* 47 U.S.C. § 254(b). Nor are IPCS providers eligible telecommunications carriers, a condition precedent to receive support. *See* 47 U.S.C. § 254(e) (“[O]nly an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support . . .”). Even if they were, universal service support is not intended to subsidize providers to enable them to charge excessive and unreasonable rates, nor is it necessary to achieve affordable rates. Moreover, NCIC’s proposal seems to be in tension with its earlier advocacy to exempt IPCS providers from paying contributions. *See, e.g.*, Comments of NCIC Inmate Communications, WC Docket Nos. 23-62, 12-375 (Mar. 9, 2023); Reply Comments of NCIC Inmate Communications at 6-7, WC Docket No. 12-375 (Dec. 17, 2021) (“urg[ing] the FCC to reexamine whether ICS providers should be required to collect and remit contributions to the Universal Service Fund”).

legislative history of the Act,⁶⁹ but also evidenced in Congress’s decision to permit the Commission to use an industry-wide cost average in setting rate caps.⁷⁰ The shift under the MWRA from the requirement that rate caps be set at a level to ensure that providers are “fairly compensated” for “each and every” completed call, to allowing ratemaking based on industry-wide cost average, thus further signals Congress’s intent to reduce IPCS rates. To adopt existing rate caps unchanged would be highly incongruous with the purpose of the MWRA.

CONCLUSION

The Public Interest Parties urge the Commission to adopt rules consistent with these reply comments.

Respectfully submitted,

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⁶⁹ See, e.g., Martha Wright-Reed Act pmbi.; 168 Cong. Rec. H10027-28 (daily ed. Dec. 22, 2022) (statement of Rep. Pallone) (“It is my hope that this bill will help reduce financial burdens that prevent people from being able to communicate with loved ones and friends.”).

⁷⁰ Martha Wright-Reed Act § 3(b)(1).

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Appendix A

“REDACTED – FOR PUBLIC INSPECTION”

Brattle Report

REPLY COMMENTS ON THE FEDERAL COMMUNICATIONS COMMISSION’S
“PROPOSED 2023 MANDATORY DATA COLLECTION FOR INCARCERATED
PEOPLE’S COMMUNICATIONS SERVICES” (DA 23-355)

PREPARED BY

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July 12, 2023



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I. Introduction

1. The Martha Wright Reed Act gives the Federal Communications Commission (FCC) new authority and flexibility to set Incarcerated People’s Communication Services (IPCS) rate caps based on industry-wide average costs from the communications industry.¹ In our comments on the IPCS NPRM, we proposed that the Commission adopt a model carrier approach to calculate average industry costs and use those costs as the basis for setting IPCS rate caps.² As the Commission has recognized in the universal service cost model context, this approach would encourage efficiency in providers, avoid allocation issues with cost reporting or inflated costs, and ensure just and reasonable rates.
2. In this report, we provide more details on our proposed model carrier approach. As we explain, this model carrier approach would involve building the cost model at average industry costs of providing voice and video communication services in the non-IPCS context and then layering on any added IPCS-specific costs as appropriate, based on any special considerations for incarcerated facilities or as determined by the Commission. Such a model carrier’s cost of providing IPCS service can take into account things such as facility size, type, or location, to the extent they are found to cause meaningful differences in the cost of providing IPCS service. Cost information for non-IPCS telecommunications services can be estimated from costs incurred by the telecommunications industry for providing similar services to various enterprises. For example, broader industry cost of providing Voice over Internet Protocol (“VoIP”) service can provide information on how much the voice telecommunications service component of IPCS should cost. Another source of such data is the E-Rate Program, which offers detailed cost/pricing information for various costs related to the provision of broadband services for schools and libraries.³ The IPCS-specific cost considerations can come from several sources as well, including data from the response to the Third MDC (as well as proposed 2023

¹ Federal Communications Commission (FCC), “Congress Enacts Martha Wright-Reed Just and Reasonable Communications Act of 2022 (updated with link to legislation),” last updated January 9, 2023, accessed July 10, 2023, <https://www.fcc.gov/congress-enacts-martha-wright-reed-just-and-reasonable-communications-act-2022-updated-link>; FCC, “In the Matter of Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act,” WC Docket No. 23-62, Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, Notice of Proposed Rulemaking and Order, ¶¶ 1-4, adopted March 16, 2023, <https://docs.fcc.gov/public/attachments/FCC-23-19A1.docx>, (“2023 IPCS NPRM and Order”).

² Coleman Bazelon and Paroma Sanyal, “Comments on ‘FCC Seeks Comment on Its Expanded Authority to Ensure Just and Reasonable Rates and Charges for Incarcerated People’s Communications Services,’ Notice of Proposed Rulemaking (Docket No. 23-62, 12-375),” The Brattle Group, May 8, 2023, ¶¶ 5-8, <https://www.fcc.gov/ecfs/document/1050883878528/1>, (“Brattle 2023 IPCS NPRM Comments”); 2023 IPCS NPRM and Order, ¶¶ 3-4.

³ FCC, “E-Rate: Universal Service Program for Schools and Libraries,” last updated September 15, 2021, last accessed July 10, 2021, <https://www.fcc.gov/consumers/guides/universal-service-program-schools-and-libraries-e-rate>.

MDC in the future), and provider contracts. Although the responses to the Third MDC had some inconsistencies, the data may provide benchmarks for IPCS-specific costs, particularly in areas where alternative data are not available. As further described in this report, provider contracts can also provide useful information, such as data on the rates charged, which are sometimes accompanied by a detailed list of services included in the contract and, in a few cases, the costs. Overall, as the Commission has recognized in other contexts, a model carrier approach breaks the nexus between an individual provider's costs and rates and the potential associated distorted incentives.

3. A proposed model carrier approach is provided in this report. Section II explains the high-level cost categories that will form the basis of the model carrier approach. Along with discussion on which of the underlying components should or should not be considered by the Commission. Section III provides an illustration of per minute costs attributable to the various categories. Section IV concludes.

II. The Model Carrier Approach

4. In the IPCS industry, the goal for regulators is to establish rates that are reasonable for those that invest in this industry as well as consumers.⁴ Regulators want companies that invest in this industry to make a normal rate of return, but at the same time need to be careful not to create incentives that discourage cost reduction and result in higher prices for the end users. A model carrier approach avoids issues with industry incentives and completeness of data.
5. The model carrier approach we are proposing involves creating a hypothetical, idealized carrier or company that represents the standard for efficiency, costs, and performance within the industry. This model carrier serves as a benchmark against which the rates of actual carriers are evaluated and set. The model carrier is assumed to only provide the proscribed IPCS services the FCC deems appropriate, operate efficiently and effectively, employing best practices and optimal resource utilization. Rates are then established based on the costs and performance of the model carrier.
6. We propose dividing IPCS into two distinct services: voice calling and video calling. For each of these telecommunications services that an IPCS provider may offer, we propose building up a model carrier rate based on industry benchmarks for costs. The cost of each service could be based on five cost modules, (1) telecom costs (2) facilities costs, (3) security costs (if necessary), (4) overhead costs, and (5) allowable margin. Below we briefly explain each category.

⁴ FCC, "Telephone Service for Incarcerated Individuals," last updated December 20, 2022, last accessed July 10, 2023, <https://www.fcc.gov/consumers/guides/telephone-service-incarcerated-individuals#:~:text=FCC%20rate%20caps%20apply%20only,a%20minute%20for%20collect%20calls>.

A. Telecom Costs

7. The telecommunications cost component should cover the cost of the underlying telecommunications service. IPCS-specific costs related to providing communications equipment in the facility and any allowed security costs will be addressed separately. For a voice call, the telecommunications service provision is benchmarked as the cost of a VoIP call. This incorporates not just the cost of providing the call, but interconnection, CALEA, and any other costs associated with making a voice call that is interconnected with the PSTN. Similarly, for a video call, the telecommunications service provision is benchmarked as the cost of a standard video call using fixed broadband. The transportation component of all of these services is broadband internet, scaled to the appropriate size for the facility. We model this cost as the incremental cost of renting or leasing an appropriately sized line. It is important to note, however, that correctional facilities have data needs independent from IPCS and, hence, may already have sufficient broadband infrastructure in place.

B. Facilities Costs

8. When assessing the facility costs associated with correctional facilities, only equipment that is necessary for the provision of telecommunications service in an incarceration facility should be considered. These items represent IPCS-specific costs which non-IPCS providers of similar services do not incur. The additional items that the IPCS provider must provide at the facility includes the payphones and associated infrastructure and kiosks.⁵ The costs of these items will be allocated to the service (voice or video) they support. For example, the cost of a phone handset would only be allocated to the voice calling service, whereas the cost of a video kiosk would be allocated to the video calling service. As these types of equipment are long-lived, an appropriate amortization schedule will be used to allocate the share of these capital costs consumed in the period of analysis.

⁵ See, ¶ 25. Note that the VoIP price used has the cost of overheads and margins built into it and is an upper bound. See also, "Standard Agreement: California Department of Corrections and Rehabilitation," signed by GTL December 28, 2020, pp. 102-104 of pdf, https://www.prisonpolicy.org/contracts/file.php?document_id=317&name=CDCR_C5610009_Agreement.pdf, ("GTL California Contract").

C. Cost of Safety and Security Measures

9. In the FCC's Proposed 2023 IPCS Mandatory Data Collection Public Notice, the Commission sets out seven categories for Company-Wide Costs of Provider's Safety and Security Measures.⁶ These are: (1) Communications Assistance for Law Enforcement Act (CALEA) services, (2) Law enforcement support services, (3) Communication security services, (4) Communication recording services, (5) Communication monitoring services, (6) Voice biometrics services, and (7) Other Safety and Security Measures.⁷
10. Within the telecommunications industry for non-incarcerated people, safety and security features, other than CALEA services, are rarely provided. Therefore, it is important to consider which safety and security measures should be factored into the voice, video, and data rates for IPCS and which costs can be considered additional incarceration related features outside of the provision of telecommunication services. We understand that some have advocated that only costs related to the fulfilment of CALEA requirement, and no other safety and security measures should be included in IPCS rates.⁸ As CALEA costs are embedded in the telecommunications costs and thus not specific to IPCS, the benchmark cost for security would be zero. To the extent an IPCS providers incur safety and security costs, the question is whether they are necessary to IPCS and thus should be included in the rate charged to end users. Notably, the model carrier approach is flexible enough to incorporate other types of safety and security-related costs if the FCC determines they are necessary after reviewing the record and 2023 MDC submissions.

D. Overhead Costs

11. Overhead costs are typically taken to mean the Selling, General, and Administrative ("SG&A") costs of corporations. SG&A costs represent necessary expenses that are not directly attributed to the provision of the good or service sold. In the telecommunications industry, these costs include expenses related to marketing, leases or rentals on office space for employees not directly involved in the buildout of networks, or employee perks (such as food in the office or parking privileges).

⁶ FCC, "Wireline Competition Bureau and Office of Economics and Analytics Seek Comment on Proposed 2023 Mandatory Data Collection for Incarcerates People's Communications Services," Public Notice, WC Docket Nos. 23-62, 12-375, DA 23-355, pp. 5, released April 28, 2023, <https://docs.fcc.gov/public/attachments/DA-23-355A1.pdf>, ("Proposed 2023 IPCS Mandatory Data Collection PN").

⁷ Proposed 2023 IPCS Mandatory Data Collection PN, p. 5.

⁸ See, FCC, "Communications Assistance for Law Enforcement Act," last accessed July 10, 2023, <https://www.fcc.gov/calea>, ("FCC – CALEA"). See also, Worth Rises, "FCC – 6th NPRM Reply Comments," March 3, 2023, <https://www.fcc.gov/ecfs/document/10304221918581/1>.

12. We look to SG&A costs of typical firms in the telecommunications industry as a benchmark. Such firms would be expected to share many of the cost structures of IPCS providers. One area where cost may differ between IPCS providers and our benchmark firms is in marketing. On the one hand, IPCS customers have no choice but to use the IPCS providers' services and, therefore, traditional marketing would be largely wasted on them. On the other hand, IPCS providers have to bid for contracts to provide IPCS services to prisons and jails. As of yet, we have no evidence that IPCS providers' marketing (or other overhead) expenses are higher or lower than the benchmark firms and, consequently, do not make any adjustments to the benchmark SG&A averages.

E. Allowed Margin

13. In order to make IPCS available to incarcerated persons at a reasonable cost, we must ensure that we compensate IPCS providers at rates that will maintain a healthy, sustainable level of competition. An operating margin should consider the riskiness of a business and reasonable returns on investment. The above categories ensure a firm is able to recover all of its costs (operating and non-operating costs). In addition, a margin or mark-up over these costs allows a firm to generate a return on its services, incorporating a return to capital and the ability to finance operations. In other contexts the FCC has allowed operators to recover certain costs and earn a fair rate of return through its use of an allowable operating margin.⁹ As discussed later, we use these precedents to benchmark the operating margin in this context. These benchmarks allow for more than just a return on investments—in some cases covering some marketing or technology development expenses. We note that the IPCS industry is inherently less risky in terms of cost volatility than the other regulated industries used to benchmark margin and thus the allowed margin could potentially be lower than the other FCC cases.

⁹ See, FCC, "TRS Fund Compensation for Internet Protocol Captioned Telephone Service and Internet Protocol Relay Service," CG Docket Nos. 22-408, 03-123, and 13-24, Notice of Proposed Rulemaking and Order on Reconsideration (2022), <https://docs.fcc.gov/public/attachments/DOC-389648A1.pdf>, ("2022 IP Relay Compensation Order"); FCC, "Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities," CG Docket Nos. 10-51 and 03-123, Report and Order and Order (2017), FCC 17-86, ¶¶ 24-26, <https://docs.fcc.gov/public/attachments/FCC-17-86A1.pdf>, ("2017 VRS Compensation Order"); FCC, "Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Rulemaking of Sprint Corporation," CG Docket No. 03-123, RM-11820, Report and Order, (2022), <https://docs.fcc.gov/public/attachments/FCC-22-48A1.pdf> ("2022 IP CTS Compensation Order").

III. Illustrative Costs and Sources

14. Here we illustrate the model carrier approach. To do so we estimate the five component costs (telecom, facilities, security, overhead, and margin) for both voice and video services. The estimate below provide a preliminary calibration of the model carrier approach. Recognizing that there may be heterogeneity in costs depending on the size of the facility, a fact noted by the FCC in prior orders, we use three categories of incarceration facilities – small (0 - 500 ADP), medium (500 to 1000 ADP) and large (1,000 to 5000 ADP) to estimate the costs.¹⁰

A. Estimating the Telecom Costs

1. Voice and Video Communications Service Component

15. For the telecom costs we use industry retail rate of providing VoIP service and the FCC's E-Rate data on broadband costs.¹¹ The FCC's E-Rate program, also known as the Schools and Libraries Universal Service Program, provides discounted telecommunications and internet services to eligible schools and libraries.¹² The E-Rate program provides funding for two service categories: Category One services cover internet access and data connections, while Category Two services cover internal connections, such as Wi-Fi networks, routers, switches, and cabling.¹³ Schools and libraries interested in participating in the E-Rate program must annually submit applications to the Universal Service Administrative Company (USAC), the organization responsible for program administration.¹⁴ The application process involves providing information about the institution's needs, cost estimates, and other relevant details. We use these cost data to benchmark the cost of broadband lines for providing telecommunications services to an incarceration facility of a certain size.

16. As mentioned earlier, we believe by benchmarking with industry data, the FCC can ensure that consumers are not being overcharged for certain costs. For instance, according to Twilio, calls to or

¹⁰ See, 2023 IPCS NPRM and Order, FN 75, "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)." As the results of our model carrier calibration suggest, it might be reasonable to collapse the medium and large categories into one and only have two ADP-based classes of facilities.

¹¹ FCC, "E-Rate: Universal Service Program for Schools and Libraries," last updated September 15, 2021, last accessed July 10, 2023, <https://www.fcc.gov/consumers/guides/universal-service-program-schools-and-libraries-e-rate>, ("E-Rate: Universal Service Program for Schools and Libraries").

¹² E-Rate: Universal Service Program for Schools and Libraries.

¹³ Universal Service Administrative Co, "E-Rate," last accessed July 10, 2023, <https://www.usac.org/e-rate/applicant-process/applying-for-discounts/category-two-budget/>.

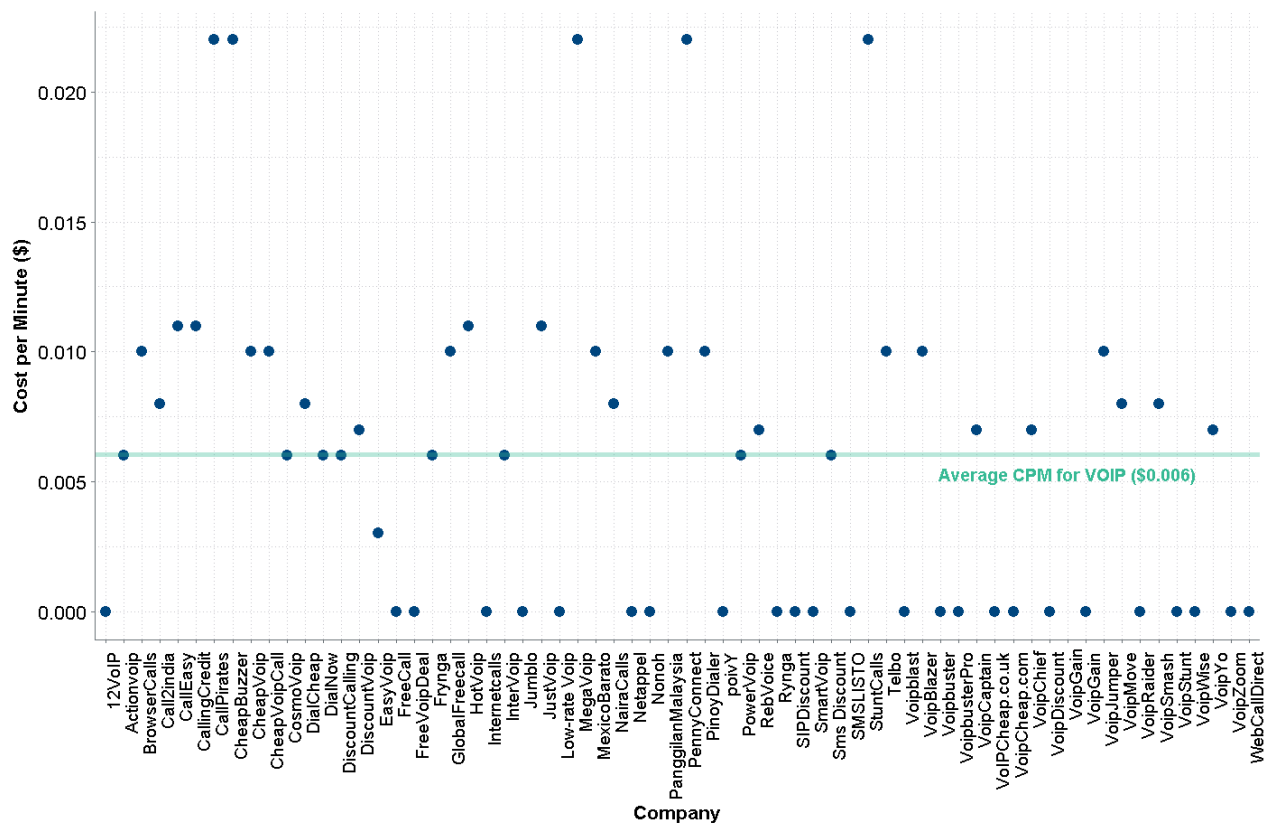
¹⁴ E-Rate: Universal Service Program for Schools and Libraries.

from web browsers and calls to or from mobile devices cost \$0.0040 per minute.¹⁵ As the number of client minutes go up, the cost per minute generally goes down. To benchmark telecom costs, we break the provision of the service into two components: the service cost and the broadband cost. The service cost is benchmarked against the retail cost of providing a VoIP or video call. We also estimate the broadband costs of supporting those calls.

a. Per Minute Interconnected VoIP Call Cost

17. For voice communications, a majority of the incarceration facilities use VoIP services and VoIP is clearly a best practice.¹⁶ We do not expect there to be large variation across ADP and use the cost of VoIP from publicly available sources as seen in Figure 1 below.

FIGURE 1: RETAIL VOICE CALLING COSTS (VOIP)



Sources and Notes: Brattle estimation of VoIP CPM for landline calls only. For data, see, “Voip Rates Comparison,” last accessed May 4, 2023, <https://voiprates.info/>.

¹⁵ “Pricing,” Twilio, last accessed July 10, 2022, <https://www.twilio.com/en-us/client/pricing>.

¹⁶ GTL California Contract, pp. 102-104 of pdf.

b. Per Minute Video Call Cost

18. For the video calling component, we rely on commercial sources. We get information on data usage for a 60 minute call for three distinct applications: Zoom, Microsoft Teams and Skype. For a standard video call for an hour, Microsoft Teams requires 225 MB of data, Zoom requires 540 MB of data and Skype requires 270 MB of data.¹⁷ From publicly available information on data plans, we know the cost of a gigabyte of data. Using this information we calculate a per-minute cost for a video call.¹⁸ From information on data plans, we take the average cost per GB across three providers (AT&T, Cox, and Xfinity) which is approximately \$0.026 (see Table 9 in the Appendix). Then, we take the average of the video calling data usage (in gigabytes per minute) across three applications (Zoom, Teams, and Skype) which is approximately 0.0056 GB/minute (as shown in Table 7 in the Appendix). Finally, we multiply the two numbers to estimate the average video call cost per minute which is \$0.0001 as shown in Table 1 (for calculations see Table 7 in the Appendix).

2. Broadband Costs

19. To calculate the cost of broadband lines, we first needed to estimate the flow rate of data. To perform this calculation, we matched the facilities listed in a publicly available GTL contract for California with the 2020 ADP values for the California Department of Corrections' Adult Facilities listed by the California Department of Corrections and Rehabilitation.¹⁹ This analysis allowed us to determine that based on the reviewed contracts, there are 22 incarcerated persons for each phone. Similarly, using the same data source, we calculate that on average, 1 video kiosk can serve approximately 44 incarcerated persons.²⁰ Then, using the mean values for each ADP category, we estimated the number of phones and kiosks that an average facility would have in each category.²¹ This results in small facilities needing 7 phones and 4 kiosks, medium facilities requiring 33 phones and 17 kiosks, and large facilities needing 84 phones and 42 kiosks.²² We use these values to obtain the number of telephones and kiosks at a representative facility for each category.

¹⁷ Xplore, "Monitor and Manage Your Data When Video Calling," last accessed July 11, 2023, <https://www.xplore.ca/support/internet/managing-data-using-skype/>.

¹⁸ Allconnect, "Internet data caps by provider," last accessed July 11, 2023, <https://www.allconnect.com/blog/internet-service-providers-with-data-caps>.

¹⁹ See, GTL California Contract. See also, California Department of Corrections and Rehabilitation, "List of Adult Institutions," last accessed July 11, 2023, <https://www.cdcr.ca.gov/adult-operations/list-of-adult-institutions/>.

²⁰ Our ADP to phone ratio is 21.51. Assuming that there are twice as many people to a kiosk compared to a phone, ADP to kiosk ratio: $21.51 * 2 = 43.02$. We round all of our calculations for equipment ratios upwards to the nearest whole number.

²¹ We divide the mean ADP for each category by the ADP to equipment ratio and round up to the nearest integer. For population by facility size, see, Table 6 in the Appendix.

²² Recall that we round numbers up to the nearest whole number.

Estimating the Capacity Requirement

20. From public data sources, we determined the data usage during an average voice call for one minute.²³ For video calling, we take the video calling data usage as described earlier to be 0.0056 GB/minute, and the cost of video per minute to be \$0.0001.²⁴ For voice calling, we calculate the data usage per minute to be 0.0009 GB/minute, and the cost of voice calling per minute to be \$0.006.²⁵ To calculate this, we take the average of the two most common codecs (G.7.11 and G.729) for a data rate of 0.0009 GB/minute.²⁶ After determining the data consumption for a minute of video call and a minute of audio call, we proceeded to compute the data requirements for an average facility in each ADP category. As a first step, we estimate the average number of minutes for small, medium and large facilities. From the Third MDC data, we find that the average number of *voice* minutes for small, medium and large facilities are [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] respectively.²⁷ We find the average number of *video* minutes for small, medium and large facilities are [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] respectively.²⁸
21. To calculate a maximum flow requirement, we assume that all phones and kiosks are online simultaneously. By summing up the data usage per minute for all devices in a facility, we calculate the total required data capacity per minute.²⁹ We then compare the per minute data support requirement to the data rate of T-1 and T-3 broadband lines.³⁰ Finally, we calculate the required number of T-1 lines and T-3 lines for an average-sized facility in each ADP category.³¹

²³ See, ¶ 17 and Appendix Table 8.

²⁴ See, Table 7 in the Appendix. To do this, we assume that the cost per GB of data is \$0.026. The \$0.026 is based upon wireline phone plans and their associated data caps. See, Table 9. See also, Joe Supan, “Internet data caps: Who has them, who doesn’t and what you need to know in 2023,” last updated December 5, 2022, last accessed July 10, 2023, <https://www.allconnect.com/blog/internet-service-providers-with-data-caps>.

²⁵ See, Figure 1 for the voice calling CPM and Table 8 in the Appendix for voice GB/minute.

²⁶ See, Table 8. See also, Airespring, “Understanding SIP Trunking: Using G711 and G729 Codecs,” last accessed July 10, 2023, <https://airespring.com/understanding-sip-trunking-using-g711-g729-codecs/>.

²⁷ See, Table 6.

²⁸ See, Table 6. Note, that the ratio of voice and video minutes can change depending on the data the FCC receives in the 2023 MDC.

²⁹ We increase this amount by 25% to create a buffer in required capacity.

³⁰ T-1 and T-3 lines have maximum bandwidths of 1,544 kbps and 274,760 kbps respectively. See, “T1, T1c, T2, T3, T4,” last accessed July 12, 2023, <http://ckp.made-it.com/t1234.html>.

³¹ Note we exclude T-2 and T-4 lines as the E-Rate dataset did not have cost data on these types of broadband lines. The maximum Gb/minute a T-1 line can support is roughly 0.09 GB/min, while for T-3 lines this value is roughly 2.56 GB/min.

Estimating the Cost of the Required Capacity

22. Based on the above calculation, we determined the monthly cost of T-1 and T-3 lines to fulfill the facility's needs from the E-Rate data.³² It is worth highlighting that many correctional facilities already have existing broadband lines that are independent of IPCS. In such scenarios, the IPCS service provider may not need to invest additional funds for setting up the broadband infrastructure since it is already in place and the cost of installing broadband lines will be zero. Further, if the IPCS capacity is purchased with other facility broadband capacity, the incremental cost of the IPCS capacity would be much lower than estimated here.
23. For the Universal Service Administrative Company E-rate data, we use the dataset titled “E-Rate Request for Discount on Services: FRN Line Items (FCC Form 471 and Related Information)” which provides information on individual product/service data, costs, quantities, and descriptions.³³ Applicants file the FCC Form 471 to request funding for eligible services and equipment.³⁴ We filtered the data to the instances where “Product Type” was equal to “T-1” and “T-3” for the subset of years for which data on T-1 and T-3 lines was available (2016 – 2020). We then calculated the average of the column “FRN Line Monthly Cost” by broadband line type as this column represents the incremental monthly cost for each unit.
24. Once we determined the monthly cost of broadband lines, we divided by the minutes of use for each category to calculate a per-minute cost of audio and video calls. We calculate data demand for video and voice calls using ADP as an allocator, as shown in rows [10]-[19] in Table 1.

³² To determine the least costly option, we selected the most affordable option for each ADP category. For example, if using a single T-3 line proved to be cheaper than using five T-1 lines, we chose the T-3 option.

³³ Universal Service Administrative Co., “E-Rate Request for Discount on Services: FRN Line Items (FCC Form 471 and Related Information),” downloaded on June 30, 2023, <https://opendata.usac.org/E-Rate/E-Rate-Request-for-Discount-on-Services-FRN-Line-I/hbj5-2bpj>.

³⁴ Universal Service Administrative Co., “FCC Form 471 Filing,” accessed July 9, 2023, <https://www.usac.org/e-rate/applicant-process/applying-for-discounts/fcc-form-471-filing/>.

TABLE 1: THE COST OF BROADBAND LINES AND INTERCONNECTED VOIP SERVICE

Category	Calculations/Source	Facility Size		
		Small	Medium	Large
Minutes and Data Usage		[BEGIN HIGHLY CONFIDENTIAL]	[BEGIN HIGHLY CONFIDENTIAL]	[BEGIN HIGHLY CONFIDENTIAL]
Mean Monthly Minutes - Video	[1] [2]/2			
Mean Monthly Minutes - Voice	[2] See assumptions.			
Total Minutes	[3] [1]+[2]			
% Total Minutes Video	[4] [1]/[3]			
% Total Minutes Voice	[5] [2]/[3]			
		[END HIGHLY CONFIDENTIAL]	[END HIGHLY CONFIDENTIAL]	[END HIGHLY CONFIDENTIAL]
Monthly Interconnected VoIP Rate per Minute	[6] Retail rate.	\$0.006	\$0.006	\$0.006
Video Rate per Minute	[7] Public information.	\$0.0001	\$0.0001	\$0.0001
Video Data Usage (GB/Min)	[8] See assumptions.	0.0056	0.0056	0.0056
Voice Data Usage (GB/Min)	[9] See assumptions.	0.0009	0.0009	0.0009
Calculating Data Demand				
T-1 Capacity (Gb/Min)	[10] See assumptions.	0.0883	0.0883	0.0883
T-3 Capacity (Gb/Min)	[11] See assumptions.	2.5598	2.5598	2.5598
Number of Phones	[12] GTL contracts, facilities calculations.	7	33	84
Number of Kiosks	[13] GTL contracts, facilities calculations.	4	17	42
Video Data Demand	[14] [8]*[13]	0.022	0.095	0.236
Voice Data Demand	[15] [9]*[12]	0.006	0.029	0.074
Maximum Data Needed (GB/min)	[16] [14]+[15]	0.029	0.124	0.310
% Total Demand (Video)	[17] [14]/[16]	78%	77%	76%
% Total Demand (Voice)	[18] [15]/[16]	22%	23%	24%
Maximum Data Needed for 1.25 Times Usage (GB [19])	[16]*1.25	0.036	0.156	0.387
Calculating T-1 and T-3 Lines Needed				
Number of T-1 Lines Needed	[20] [19]/[10] rounded up to nearest whole number	1	2	5
Number of T-3 Lines Needed	[21] [19]/[11] rounded up to nearest whole number	1	1	1
Cost of T-1	[22] \$605.32 * [20]	\$605	\$1,211	\$3,027
Cost of T-3	[23] \$2,278.43 * [21]	\$2,278	\$2,278	\$2,278
		[BEGIN HIGHLY CONFIDENTIAL]	[BEGIN HIGHLY CONFIDENTIAL]	[BEGIN HIGHLY CONFIDENTIAL]
Broadband Costs for Facilities				
Video Cost of Broadband	[24] [22]*[17], Large: [23]*[17]			
Voice Cost of Broadband	[25] [22]*[18], Large: [23]*[18]			
Cost of Broadband Lines (\$/min)	[26] [22]/([2]+[1]), Large: [23]/([2]+[1])			
Cost of Broadband Video	[27] [24]/[1]			
Cost of Broadband Voice	[28] [25]/[2]			
Video Cost (\$/min)	[29] [27]+[7]	[END HIGHLY CONFIDENTIAL]	[END HIGHLY CONFIDENTIAL]	[END HIGHLY CONFIDENTIAL]
Voice Cost (\$/min)	[30] [28]+[6]			

Sources and Notes: See Calculations/Source.

[2]: See, Table 6.

[6]: See, Figure 1.

[7]-[8]: See, Table 7.

[9]: See, Table 8.

[10]-[11]: A T-1 line can support 1,544 kbps while a T-3 line can support 44,736 kbps. This is the equivalent of roughly 0.09 GB/min and 2.56 GB/min (For T-1 and T-3 lines respectively) assuming 1 GB equals 1,048,576 kB.

[12]-[13]: See, Table 2.

[22]-[23]: Using E-Rate data, we calculate the cost of one T-1 line to be \$605.32 and one T-3 line to be \$2,278.43.

[24]-[30]: Note that small facilities high costs are due to the fact that we assume these facilities do not have broadband. Thus, given the small ADP, the costs of fiber are more per person. In reality, many facilities likely already have broadband. Therefore, these estimations are an overstated measure of how much it costs facilities to have T-1 and/or T-3 lines.

B. Calculating Facilities Costs

25. For facility costs, we use commercial sources to obtain pricing data on necessary equipment and installation costs. To calculate the per-unit cost for facilities related expenses (phones, kiosks, etc.), we rely on commercial sources for pricing information. We have excluded items that are only tangentially relevant to IPCS or equipment that a facility would typically possess independent of IPCS provision. To determine the quantity of each item at a specific facility, we utilize an ADP to unit ratio. For example, we estimate from a contract between GTL and the California Department of Corrections and Rehabilitation Facilities (CDCR) that there is one phone for every 22 incarcerated persons.³⁵ We estimate that the ratio of phones to carts is 74:1 where two-thirds is used to support voice calling while the remaining one-third is used to support video calling.³⁶ We also estimate that there is a ratio of 9:1 phones per enclosure and 222:1 phones per pedestal.³⁷ Additionally, we anticipate a smaller quantity of kiosks than phones, and assume a ratio of one kiosk for every 44 incarcerated persons compared to one phone for every 22 incarcerated individuals.³⁸ To determine the average number of minutes for each facility size, we utilize provider data from the Third MDC, where we group by facility size categories.³⁹

³⁵ See, GTL California Contract. The exact ratio is 21.51 incarcerated individuals per phone, but we round to the nearest whole number to get a value of 22. To get this value, we match facilities listed in the GTL contract in “Attachment 3: Adult Institutions’ IWTS Equipment” with those adult facilities listed on the CDCR website. We then divide population per facility by the number of phones listed in Attachment 3 to get the number of people per phone. To get values for population per facility, we use the 2020 values for the California Department of Corrections’ Adult Facilities listed by the California Department of Corrections and Rehabilitation. See, California Department of Corrections and Rehabilitation, “List of Adult Institutions,” last accessed July 11, 2023, <https://www.cdcr.ca.gov/adult-operations/list-of-adult-institutions/>. Population values are reported for each facility as a “Statistical Report” for 2020. Here is Avenal State Prison, for example. See, Avenal State Prison (ASP), “Report and Statistics for Avenal State Prison (ASP),” last accessed July 11, 2023, <https://www.cdcr.ca.gov/research/reports-and-statistics-asp/>. Row 12 of each 2020 report states the “Total Number of Inmates” per month at the facilities listed in Attachment 3.

³⁶ Note, that the ratio of voice and video minutes can change depending on the data the FCC receives in the 2023 MDC.

³⁷ See, GTL California Contract. To calculate the ratio of equipment per phone we round all numbers up to the nearest whole number. The exact ratios of equipment to phones are as follows 73.78 carts per phone, 8.47 enclosures (note we sum enclosures and booths together in the GTL contract) per phone, and 221.33 pedestals per phone.

³⁸ We multiply 21.51 by two to assume there are half as many kiosks in a facility as there are phones.

³⁹ See, Table 6.

TABLE 2: CALCULATION OF FACILITIES COSTS

Equipment	Facility Size	Mean ADP	ADP per Unit (Assumed)	Per Unit Cost	Number of Units Required	Total Cost	1-year Annual Cost	Useful Life	Monthly Cost	Mean Minutes	Cost Per Minute (\$/Min)
[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]	[J]	[K]	[L]
		[BEGIN HIGHLY CONFIDENTIAL]	[BEGIN HIGHLY CONFIDENTIAL]		[BEGIN HIGHLY CONFIDENTIAL]	[BEGIN HIGHLY CONFIDENTIAL]	[BEGIN HIGHLY CONFIDENTIAL]	[BEGIN HIGHLY CONFIDENTIAL]	[BEGIN HIGHLY CONFIDENTIAL]	[BEGIN HIGHLY CONFIDENTIAL]	[BEGIN HIGHLY CONFIDENTIAL]
Phones	[1] Small			\$285							\$0.000467
Phones	[2] Medium			\$285							\$0.000403
Phones	[3] Large			\$285							\$0.000448
Carts - Voice	[4] Small			\$283							\$0.000066
Carts - Voice	[5] Medium			\$283							\$0.000012
Carts - Voice	[6] Large			\$283							\$0.000011
Carts - Video	[7] Small			\$142							\$0.000066
Carts - Video	[8] Medium			\$142							\$0.000012
Carts - Video	[9] Large			\$142							\$0.000011
Pedestals	[10] Small			\$370							\$0.000087
Pedestals	[11] Medium			\$370							\$0.000016
Pedestals	[12] Large			\$370							\$0.000007
Enclosures	[13] Small			\$1,185							\$0.000277
Enclosures	[14] Medium			\$1,185							\$0.000203
Enclosures	[15] Large			\$1,185							\$0.000222
Kiosks	[16] Small			\$3,566							\$0.006679
Kiosks	[17] Medium			\$3,566							\$0.005190
Kiosks	[18] Large			\$3,566							\$0.005609
Installation - phones	[19] Small			\$265							\$0.000434
Installation - phones	[20] Medium			\$265							\$0.000374
Installation - phones	[21] Large			\$265							\$0.000417
Installation - kiosks	[22] Small			\$1,190							\$0.002228
Installation - kiosks	[23] Medium			\$1,190							\$0.001732
Installation - kiosks	[24] Large			\$1,190							\$0.001871
		[END HIGHLY CONFIDENTIAL]	[END HIGHLY CONFIDENTIAL]		[END HIGHLY CONFIDENTIAL]	[END HIGHLY CONFIDENTIAL]	[END HIGHLY CONFIDENTIAL]	[END HIGHLY CONFIDENTIAL]	[END HIGHLY CONFIDENTIAL]	[END HIGHLY CONFIDENTIAL]	[END HIGHLY CONFIDENTIAL]

Sources and Notes: See, Nevada Department of Taxation, “Expected Life Study: Telecommunications and Cable Assets,” last accessed July 12, 2023, <https://tax.nv.gov/uploadedFiles/taxnvgov/Content/Meetings/Expected%20Life%20Study-Telecommunications%20and%20Cable%20Assets.pdf>, pdf p. 14, for information on useful life of telephones and related equipment. See, GTL California Contract for equipment.

[C]: See, Table 6.

[D]: See, GTL California Contract for population to phone ratio and kiosk to phone ratio, ¶ 19 and ¶ 25.

[E][4]-[9]: See, Payphone.com, “Inmate Rolling Phone Cart,” last accessed July 7 2023, <https://payphone.com/Inmate-Rolling-Phone-Cart.html>. Note, we assume two-thirds of carts goes towards the use of voice, while the remaining one-third goes towards the use of video.

[E][10]-[12]: Payphone.com, “Standard Floor Mount Pedestal,” last accessed July 7, 2023, <https://payphone.com/Standard-Floor-Mount-Pedestal.html>

[E][13]-[15]: Payphone.com, “GT-101,” last accessed July 7, 2023, <https://payphone.com/Mounting-and-Enclosures/GT-101.html>.

[E][16]- [18]: Advanced Kiosks, “General Services Administration Federal Supply Service Authorized Federal Supply Schedule FSS Price List, Contract Period: February 21, 2017 – February 20, 2027,” last accessed July 11, 2023, at p. 5, https://www.gsaadvantage.gov/ref_text/GS35F249GA/OY4KR1.3TUXLP_GS35F249GA_GS-35F-249GA-4-13-2023-845578.PDF.

[E][19]-[21]: Note, we take the maximum value for telephone installation. See, Fixr, “How much does it cost to install a telephone system,” August 3, 2022, last accessed July 10, 2023, <https://www.fixr.com/costs/digital-phone-system>.

[E][22]-[24]: GSA Advantage, “General Services Administration Federal Supply Service Authorized Federal Supply Schedule Price List, Contract Period 02/26/2023 through 02/26/2028,” last accessed July 11, 2023, at p. 8, https://www.gsaadvantage.gov/ref_text/47QTCA23D0058/OY8HN2.3TYUHQ_47QTCA23D0058_TOUCHSOURCETE_XTFILEMAS.PDF.

[F]: [C]/[D] rounded up to the nearest whole number.

[G]: [F]*[E].

[H]: Assume Telecom WACC using GTL contract from MDC is 11.67%, and 50% (half) of total costs are un-consumed in any given year. $([G] * 0.5) * 11.67\%$.

[I]: See, Nevada Department of Taxation, "Expected Life Study: Telecommunications and Cable Assets," last accessed July 12, 2023, <https://tax.nv.gov/uploadedFiles/taxnvgov/Content/Meetings/Expected%20Life%20Study-Telecommunications%20and%20Cable%20Assets.pdf>, pdf p. 14.

[J]: $[G] / [I] / 12 + ([H] / 12)$.

[K]: See, Table 6.

[L]: $[J] / [K]$.

26. Additionally, we assume a useful life of 10 years for the equipment and annualize the cost accordingly.⁴⁰ Finally, we divide the monthly cost of equipment by the average number of monthly minutes to calculate the per-minute facilities cost for providing IPCS. Table 3 below shows the aggregated per minute facilities costs by facility size. For the per-minute cost of voice and video, we add all per-minute costs for equipment that is used for each of the communication services. For shared equipment, only carts in this case, we assume that expenses are divided with two-thirds of the cost of the expenses attributed to voice calling and one-third attributed to video calling.

TABLE 3: PER MINUTE FACILITIES COSTS BY FACILITY SIZE

Facility Size	Voice	Video
Small	\$0.0013	\$0.0090
Medium	\$0.0010	\$0.0069
Large	\$0.0011	\$0.0075

Sources and Notes: See, Table 3.

C. Understanding the Cost of Safety and Security Measures

27. CALEA requires that "telecommunications carriers and manufacturers of telecommunications equipment design their equipment, facilities, and services to ensure that they have the necessary surveillance capability to comply with legal requests for information."⁴¹ As this requirement is not unique to the IPCS industry, all CALEA-related costs should be already incorporated into the Telecom Costs that we outline in this model.

⁴⁰ Nevada Department of Taxation, "Expected Life Study: Telecommunications and Cable Assets," last accessed July 12, 2023, <https://tax.nv.gov/uploadedFiles/taxnvgov/Content/Meetings/Expected%20Life%20Study-Telecommunications%20and%20Cable%20Assets.pdf>, pdf p. 14.

⁴¹ See, FCC, "Communications Assistance for Law Enforcement Act," last accessed July 11, 2023, <https://www.fcc.gov/calea>.

28. If one were to take the position that only CALEA costs should be included, the costs associated with this Safety and Security Measures category would be zero, as reflected in our model. As mentioned in Section II.B.C, if the FCC were to determine that other safety and security-related measures should be included, the Commission could adjust the model carrier by finding comparable benchmarks in a competitive, non-IPCS industry. For example, if the Commission determined that the costs incurred for storing video and voice recordings should be included in the calculation of an IPCS rate cap, publicly available data suggests that such storage through cloud would cost about \$1.67 per month for 150 GB of cloud storage.⁴² By using benchmarks from non-IPCS industries, the FCC would incentivize providers to innovate and minimize long-run costs.⁴³

D. Estimating and Allocating Overhead Costs

29. For the overhead costs, we use the SG&A percentage for an average telecommunications carrier outside the IPCS context. For the security costs, we use a combination of data sources that consist of the publicly available contracts in the PPI database and our market research based on the cost of some of the services in the open market. We note that in certain cases we use market-prices as a proxies which provide the upper bound of the costs.

30. We use the SG&A margins from the telecommunications industry to benchmark this cost. Using NYU Stern datasets on different industries' financial performances in the United States, we can investigate trends in the telecommunications industry to benchmark expectations for costs providers in the IPCS industry ought to be reporting.⁴⁴ From the data, overhead costs appear to be approximately 26% of operating costs.⁴⁵

⁴² Icedrive, "Choose the right plan for you," last accessed July 12, 2023, <https://icedrive.net/plans>.

⁴³ See, GTL-California, at p. 15. This contract suggest that compact discs (CDs) are still used to store recordings.

⁴⁴ NYU Stern, "Margins by Sector (US)," last updated January 2023, last accessed July 5, 2023, https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/margin.html; NYU Stern, "Market Capitalization Changes by Sector (US)," last updated January 2023, last accessed July 5, 2023, https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/MktCap.html; NYU Stern, "Employee Metrics by Sector (US)," last updated January 2023, last accessed July 5, 2023, https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/Employee.html; NYU Stern, "Historical (Compounded Annual) Growth Rates by Sector," last updated January 2023, last accessed July 5, 2023, https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histgr.html.

⁴⁵ "Top 5 Telecom Companies in the USA in 2023," P3 Cost Analysts, last updated March 2023, last accessed July 11, 2023, <https://www.costanalysts.com/top-telecom-companies/>; AT&T: "Complete 2022 Annual Report," AT&T, last accessed July 11, 2023, <https://investors.att.com/financial-reports/annual-reports/2022>, at p. 34; Verizon: "2022 Form 10-K," Verizon Communications Inc., last accessed July 11, 2023, <https://www.verizon.com/about/sites/default/files/2022-Annual-Report-on-Form-10K.pdf>, at p. 24, p. 54; Comcast: "2022 Form 10-K," Comcast, last accessed July 11, 2023, <https://www.cmcsa.com/static-files/156da323-653e-4cc6-9bb4-d239937e9d2f> at p. 38; T Mobile: "2022 Annual Report," T-Mobile, last

E. Estimating Allowed Margin

31. For the margin calculations, we use prior FCC determinations. The FCC has adopted compensation rules in other regulated spaces that allow for an operating margin, and we draw on those sources to obtain the operating margin for our proposed IPCS model carrier methodology. When determining the appropriate operating margin for Telecommunication Relay Service (TRS), the FCC reviewed the operating margin for comparable industries in order to recommend a specific range.⁴⁶ below displays the operating margin that is applicable to each service.

TABLE 4: TRS OPERATING MARGINS

Source	Operating Margin
IP CTS	10%
IP Relay	12%
VRS	7.6% - 12.35%

Sources and Notes:

2022 IP Relay Compensation Order, ¶ 6, ¶ 15, ¶¶ 35-36; 2017 VRS Compensation Order, ¶ 26; 2022 IP CTS Compensation Order, ¶ 2, ¶ 10, ¶ 30, ¶ 54.

32. Selecting an appropriate operating margin from this array of data is not subject to a precise determination. Given these benchmarks, we recommend that an operating margin of 10% be included in this cost methodology. This will allow normal rates of return, but will guard against super-normal profits.

F. Summary of Costs by Facility Size

33. Below we calculate the cost per minute for voice and video for the three types of facilities based on the data discussed above.

accessed July 11, 2023, https://s29.q4cdn.com/310188824/files/doc_financials/2022/ar/TMUS-2022-annual-report-final.pdf at p. 32; Charter/Spectrum: “2022 Annual Report,” Charter Communications, last accessed July 11, 2023, <https://ir.charter.com/static-files/e3d00dfc-b3d6-4cf6-bbd0-309423830907> at p. 33, p. F-25 (pdf p. 105).

⁴⁶ TRS includes Internet Protocol Captioned Telephone Services (“IP CTS”), Video Relay Services (“VRS”), and Internet Protocol Relay Service (“IP Relay”). See, 2022 IP Relay Compensation Order, ¶ 29; 2017 VRS Compensation Order, ¶ 25.

TABLE 5: OVERVIEW OF BRATTLE COST MODEL

		Large		Medium		Small	
		Voice [1]	Video [2]	Voice [3]	Video [4]	Voice [5]	Video [6]
Telecom	[A]	\$0.007	\$0.005	\$0.007	\$0.006	\$0.008	\$0.017
Facility	[B]	\$0.001	\$0.007	\$0.001	\$0.007	\$0.001	\$0.009
Security	[C]	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000
Overhead	[D]	26%	26%	26%	26%	26%	26%
Margin	[E]	10%	10%	10%	10%	10%	10%
<hr/>							
Telecom + Facility + Security	[F]	\$0.008	\$0.013	\$0.008	\$0.013	\$0.010	\$0.026
Cost Per Minute + Overhead	[G]	\$0.010	\$0.016	\$0.010	\$0.017	\$0.012	\$0.033
Total Cost Per Minute	[H]	\$0.011	\$0.017	\$0.011	\$0.018	\$0.013	\$0.036

Sources and Notes: For information on the minutes of video and voice use, as well as the sizes we assume for facilities, see, Table 6.

[A]: See, Table 1.

[B]: See, Table 2 and Table 3.

[C]: Assume security costs are not included.

[D]: See, III. D: Overhead costs are 26% of all operating expenses.

[E]: See, Table 4: IP CTS current allowed margin is 10%.

[F]: [A]+[B]+[C].

[G]: ([F]*[D])+[F].

[H]: ([G]*[E])+[G].

IV. Conclusion

34. In the context of setting rates for IPCS, the goal for regulators is to establish rates that are just and reasonable. In this report we propose a model carrier approach that avoids issues with industry incentives, encourages efficiency for providers, avoids allocation issues with cost reporting, and ensures just and reasonable rates. This approach is based on estimating rate caps that are based on industry-wide average costs from the communications industry, which the FCC is now authorized to use under the Martha Wright Reed Act as discussed earlier. Our proposed model carrier approach involves creating a hypothetical, idealized carrier or company that represents the standard for efficiency, costs, and performance within the industry. This model carrier serves as a benchmark against which the rates of actual carriers are evaluated and set. The model carrier is assumed to operate efficiently and effectively, employing best practices and optimal resource utilization. Rates are then established based on the costs and performance of the model carrier.

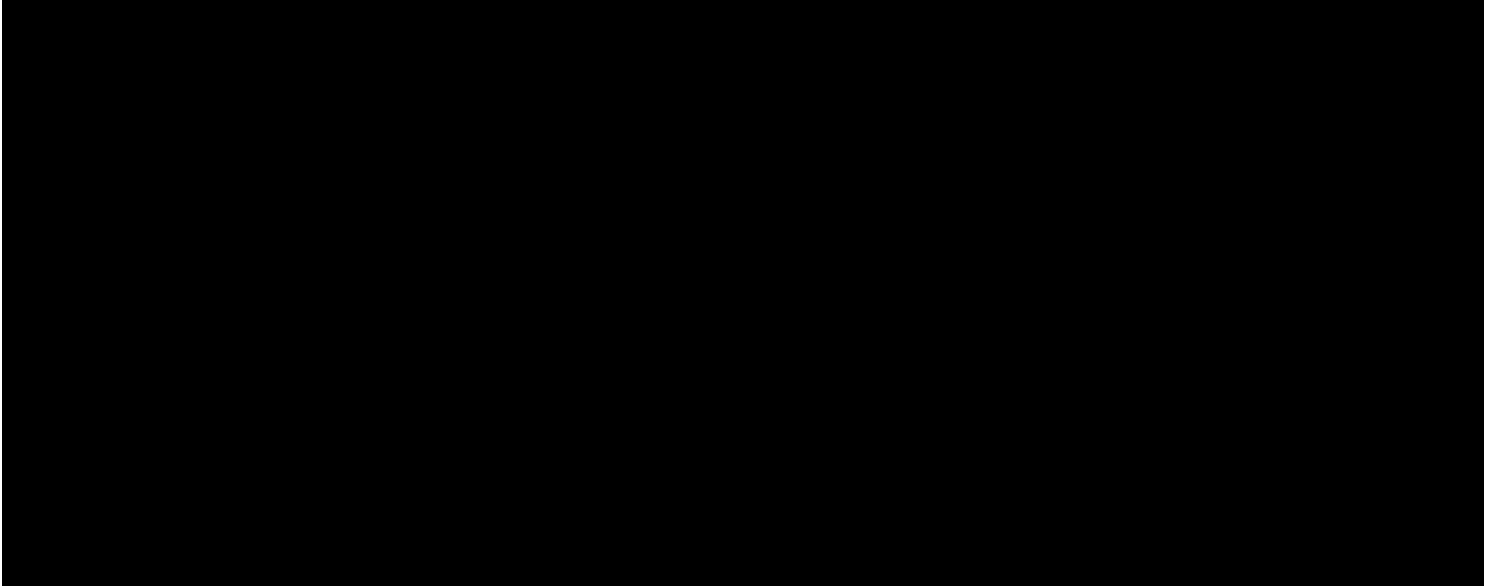
35. We divide IPCS into two distinct services: voice calling and video calling. For each of these three telecommunications services that an IPCS provider may offer, we propose building up a model carrier

rate based on industry benchmarks for costs. The cost of each service could be based on five cost modules: telecom costs, facilities costs, overhead costs, security costs (if necessary), and allowable margin. Each of these are calculated for small, medium and large facilities. Cost information for IPCS telecom costs are estimated using non-IPCS telecommunications services incurred by the telecommunications industry for providing similar services to various enterprises. These costs are based on publicly available data and data from the FCC's E-Rate Program. The IPCS-specific cost considerations can come from several sources including data from the response to the Third MDC and publicly available provider contracts.

36. We find that voice calling costs are approximately \$0.011-\$0.013 per minute and video communication costs are between \$0.017 - \$0.036 per minute depending on facility size. These costs are subject to change depending on updated video and audio usage data received by the Commission, amongst other things.

Appendix A

TABLE 6: SUMMARY OF MINUTES OF USE AND ADP PER FROM MDC DATA
[BEGIN HIGHLY CONFIDENTIAL]



[END HIGHLY CONFIDENTIAL]

Sources and Notes:

[1]-[3]: FCC, "Rates for Interstate Inmate Calling Services," April 29, 2021, <https://docs.fcc.gov/public/attachments/DOC-372023A1.pdf>. See, p. 86 and p. 215 for ADP large jails, and other size categories.

[4]-[6]: Third MDC data, Total Billed Minutes = Billed Minutes for Intrastate Communication + Billed Minutes for Interstate Communication, excluding international billed minutes.

[C]: [B]/2. We assume total video minutes are half of the mean voice minutes we calculate using the MDC.

TABLE 7: VIDEO CALLING DATA USAGE FOR A 60 MINUTE ONE-ON-ONE CALL

Video Calling Application [A]	GB Required for a 60 Minute Call [B]	MB Required for a 60 Minute Call [C]	GB/minute [D]	\$/GB [E]	Cost per Minute [F]	Video Quality [G]	
Teams	[1]	0.220	225	0.004	\$0.026	\$0.00009	Rough average quality
Zoom	[2]	0.527	540	0.009	\$0.026	\$0.00023	Default SD
Skype	[3]	0.264	270	0.004	\$0.026	\$0.00011	Standard
Average	[4]			\$0.0056		\$0.0001	

Sources and Notes:

Note, 1 GB = 1,024 MB.

[A], [C], [G]: Xplore, “Monitor and Manage Your Data When Video Calling,” last accessed July 11, 2023, <https://www.xplore.ca/support/internet/managing-data-using-skype/>.

[B]: [C] / 1,024.

[D]: [B] / 60.

[E]: See, Table 9 for cost per GB of a Wireline plan.

[F]: [D]*[E].

[E][4]: ([E][1]+[E][2]+[E][3]) / 3.

[F][4]: ([F][1]+[F][2]+[F][3]) / 3.

TABLE 8: VOIP CALLING DATA USAGE FOR A 60 MINUTE CALL

VoIP codec [A]	GB Required for a 60 Minute Call [B]	MB Required for a 60 Minute Call [C]	GB/minute [D]	\$/GB [E]	Cost per Minute [F]
G.711	0.0762	78	0.0013	\$0.026	\$0.000033
G.729	0.0293	30	0.0005	\$0.026	\$0.000013
Average	0.0459	47	0.0009	\$0.026	\$0.00002

Sources and Notes:

Note, 1 GB = 1,024 MB. The two most commonly used codecs are G.729 and G.711; See, SpectrumVOIP, “What is a Codec? G.729 vs. G.711,” last updated September 12, 2017, last accessed July 11, 2023, <https://www.spectrumvoip.com/codec-g-729-vs-g-711/>.

[A], [C]: Stephen Kota, “How Much Data Does VoIP Calling Use? – Rates Per Min,” EvodepotUSA, last accessed July 11, 2023, <https://www.evdodepotusa.com/how-much-data-does-voip-calling-use/>.

[B]: [C] / 1,024.

[D]: [B] / 60.

[E]: See, Table 9 for cost per GB of a Wireline plan.

[F]: [D]*[E].

TABLE 9: WIRELINE BROADBAND PLANS WITH DATA

Carrier [A]	Phone Plan Type [B]	Data Coverage (GB) [C]	Cost per Month [D]	Cost per GB [E]
AT&T	Wireline	1,000	\$24.99	\$0.0250
Cox	Wireline	1,250	\$34.99	\$0.0280
Xfinity	Wireline	1,250	\$30.00	\$0.0240
Average				\$0.026

Sources and Notes: Note, 1 GB = 1,024 MB.

[A], [C], and [D]: See, allconnect, “What companies offer landline phone services?” last accessed July 11, 2023, <https://www.allconnect.com/home-phone#landlinecost>;

See also, Joe Supan, “Internet data caps: Who has them, who doesn’t and what you need to know in 2023,” allconnect, December 5, 2022, last accessed July 11, 2023, <https://www.allconnect.com/blog/internet-service-providers-with-data-caps>.

[E]: [D]/[C].