October 21, 2025

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, N.E.
Washington, DC 20554

Re: WC Docket Nos. 23-62 and 12-375, notice of *ex parte* communication pursuant to 47 CFR § 1.1206(b)

Dear Ms. Dortch:

The organizations below write to oppose the Commission's decision to suspend and partially supersede the *2024 Order*[1] in this docket which established a landmark, sweeping and highly beneficial decision that would have brought relief to millions of incarcerated people and their families. We strongly urge the Commission to reverse course and return to fully implementing the *2024 Order*.[2] We describe below the flaws in the Commission's *Draft Order* issued October 7, 2025[3] and changes that would improve the *Draft Order* or address illegal or arbitrary and capricious conclusions and analysis. We also hereby incorporate by reference the arguments that apply to this *Draft Order* that we made in our Application for Review[4] of the Wireline Competition Bureau's *Suspension Order* adopted on June 30, 2025.[5]

1. The record does not support altering the *2024 Order*.

Similar to the Bureau's incorrect claims in the *Suspension Order*, the Commission claims the *2024 Order* "led to significant unintended consequences that have been brought to light by stakeholders."[6] The Commission repeats the Bureau's that it has identified a risk that incarcerated people would lose access to service altogether if the *2024 Order* were to remain in place. The record did not support that claim when the Bureau made it in June 2025 and does not now.[7] The Commission, as we explained in our *Application*, cites "two IPCS providers' (Pay Tel and Securus) hypothesis of this

[1] *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act*, Report and Order, Order on Reconsideration, Clarification and Waiver, and *Further Notice of Proposed Rulemaking*, 39 FCC Rcd 7647 (2024) (*2024 Order*).
[2] Some of the signatory organizations have challenged the *2024 Order* for failing to go far enough to effectuate Congress's statutory directives. These signatories nevertheless have an interest in seeing the *2024 Order* fully implemented, even as their challenge remains pending.
[3] Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services, FCC-CIRC2510-08, (rel. Oct. 7, 2025), https://docs.fcc.gov/public/attachments/DOC-415061A1.pdf (*Draft Order*).
[4] Application for Review of the Public Interest Parties, WC Docket 23-62 (filed July 30, 2025) (AFR or *Application*).
[5] *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act*, WC Docket Nos. 23- 62, 12-375, Order, DA 25-565 (WCB rel. June 30, 2025) (*Suspension Order*).
[6] *Draft Order* ¶1.
[7] AFR at 13-15 (demonstrating that the record included only one documented instance of a single jail ending service and that the jail has not reinstated service since the FCC suspended the current rate caps).

'possibility' and the public statement of a single carceral facility that announced it would end access to IPCS based on the *2024 IPCS Order*"[8]—a facility that did not reinstate calling when the FCC suspended the 2024 rate caps in June.[9] Moreover, further evidence introduced into the record demonstrates that the other jails whose providers claimed were losing service under the FCC's 2024 rules *do not appear to have lost service*.[10] Specifically, the Commission relies on PayTel's *ex parte* filing earlier this year that it "ceased service at four smaller facilities on the grounds that the 2024 IPCS Order rendered service unsustainable."[11] Research submitted on the record demonstrates that the only jails served by PayTel in Arizona and New Mexico, where supposedly service was curtailed, are operated by the Navajo Nation. A public records disclosure from the Navajo Nation did not reveal any effort to renegotiate rates pursuant to contract terms.[12] Thus, the veracity of the claim of loss of service is in even more doubt than it was when the *Application* was filed. Continued reliance on these claims is arbitrary and capricious.

Nor does evidence in the record support claims related to public safety. The Commission newly relies on claims from April 2025—made by Securus in the same documents underlying the flawed June *Suspension Order*—that because some facilities negotiated contracts that utilize a "reduced set of [safety and security] tools," public safety is endangered.[13] Contracts with fewer safety and security tools could simply reflect a particular jurisdiction's reasoned judgment that any benefits of those tools was not worth their cost. A generalized claim by one IPCS provider that fewer safety and security measures must necessarily lead to a decline in public safety does not constitute sufficient support for the Commission's conclusion or justify imposing $215 million in annual costs on consumers nationwide.

2. The Commission correctly reinstates the site commission and ancillary fee bans; it should not seek comment on reinstating them.

The Commission correctly proposes to immediately reinstate its bans on site commissions and ancillary fees upon the effective date of the *Draft Order*.[14] It concludes in the Draft *Further Notice* "site commissions have distorted the IPCS marketplace and site commission payments have historically exerted upward pressure on rates because by proposing higher rates, IPCS providers can afford to pay more in site commissions."[15] It further concludes "[a]ncillary service charges have long been a source of detrimental practices in the IPCS market and imposing constraints on such fees has been an integral

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[8] AFR at 15.
[9] AFR at 15, n.66 (describing Baxter County Jail's longstanding violations of First Amendment rights of those seeking to communication with incarcerated people).
[10] Letter from Stephen Raher to Marlene Dortch, Secretary (filed Oct. 12, 2025) (*Raher Letter*).
[11] *Draft Order* ¶ 23.
[12] *Raher Letter.*
[13] *Draft Order* ¶ 35.
[14] *Draft Order* ¶86 ("The compliance date of this Order therefore becomes the date on which compliance will be required for the three rules temporarily suspended in the 2025 IPCS Waiver Order—the IPCS interim rate caps (as modified herein), the prohibition on the payment of site commissions, and the per-minute requirement for IPCS offerings.")
[15] *Draft Order* ¶104.

part of the Commission's attempts to ensure just and reasonable IPCS rates."[16] We strongly support this decision and appreciate the Commission's continued recognition of the devastating and market-damaging role site commission's play in the IPCS marketplace.

In line with its fundamental and correct decision about the ban on site commissions and ancillary fees, the Commission should make two modest changes. First, the Commission should move its analysis about reinstating site commissions and ancillary fees, in paragraphs 103 and 107-108 of the *Further Notice* section, to the *Draft Order* and remove questions in paragraphs 104-106 and 109-116 of the *Further Notice* section that ask whether site commissions or ancillary fees should be reinstated. The Commission should reject HomeWav's Petition for Reconsideration rather than seeking further comment on it. Except for an ordering clause, in paragraph 129, the *Draft Order* does not affirmatively readopt or explain the Commission's bans on site commissions and ancillary fees. The Commission can easily prevent confusion on this issue by explicitly finding in the *Draft Order* that site commissions and ancillary fees are not legitimate costs. Second, the Commission should not seek further comment on reimposing these predatory and duplicative fees in the *Further Notice*. This question has been "asked and answered." The Commission should not keep a door open for backsliding in the future.

These two modest changes would be consistent with the draft Notice of Proposed Rulemaking and Notice of Inquiry recently issued for vote this month with respect to deployment of Wireless and Wireline infrastructure,[17] and with prior Commission decisions in those dockets. The Commission's decision to eliminate site commissions here is consistent with, and even more justifiable than, its decisions to preempt local governments engaged in zoning, wireless tower placement and cable franchise regulation as outlined in those draft orders. As explained elsewhere in this docket, the Commission has routinely and often limited fees and charges by local governments to costs, even when local governments are acting in their proprietary capacity.[18] Whereas in those cases, some of which have been upheld in court, the statue provides significant protection for local government management of the right-of-way, in Section 276 Congress granted local governments significantly less discretion.[19] If the Commission were to conclude that it could not preempt site commissions it would also call into question the significant preemptions of local government actions in other areas of regulation.

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[16] *Draft Order* ¶107.
[17] Build America: Eliminating Barriers to Wireline Deployments, WC Docket No. 25-253, Notice of Inquiry (rel. Sept. 30, 2025); Build America: Eliminating Barriers to Wireless Deployments, WT Docket No. 25-276, Notice of Proposed Rulemaking (rel. Sept. 30, 2025). *See also* Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018), aff'd in part City of Portland v. United States, 969 F.3d 1020 (9th Cir. 2020); Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al., WT Docket No. 17-79, WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018), aff'd in part, *City of Portland*, 969 F.3d 1020 (9th Cir. 2020).
[18] UCC Media Justice and Public Knowledge Comments, WC Docket No. 23-62 at 16-21 (filed May 8, 2025).
[19] *Id.*

3. The Commission's proposed 2-cent facility additive must be limited to costs actually incurred for used and useful costs and should not be applied to prisons.

a. *The Commission should clarify the facility additive is a cap, not a pre-authorized* de facto *site commission.*

In the *Draft Order*, the Commission proposes to adopt a uniform facility rate additive on top of rate caps to cover costs incurred by facilities in the provision of IPCS. In response to public interest concerns that such an additive would be duplicative of costs covered in the rate, the Commission explains "the rate additive is limited to used and useful IPCS costs incurred by facilities."[20] Public Interest parties here support the Commission's conclusion. We urge the Commission to add the following explicit language to the *Draft Order*: facilities may not receive, and IPCS providers may not collect, any amount in a rate additive unless they are for used and useful costs in the provision of IPCS. This requirement should be clearly stated in the *Draft Order*. Otherwise, the discussion in paragraphs 45-48 of the current *Draft Order* may inadvertently authorize two cents per minute on top of any rate charged without any evidence or agreement as to what costs the two cents are covering.

We recommend the Commission require IPCS providers that incorporate any facility additive in the rate and compensate facilities accordingly must document those costs before such a payment could be imposed on or charged to the paying customer. We recommend this documentation be retained and submitted pursuant to the next mandatory data collection.

Additionally, we urge the Commission to direct facilities and providers to affirmatively decide the appropriate level of additive to be passed on to the paying customer. The 2-cent additive is a cap and it may be that any facility additive covering used and useful costs should be below the 2-cent cap—for example, a half cent per minute. Without clarification that the facility additive must only cover used and useful costs, the Commission's determination that the facility additive is not a duplicative fee or a *de facto* site commission is wrong.[21]

Further, the Commission's decision to impose the rate additive across-the-board on prison and jails of all sizes is not based on sound reasoning or evidence. The data upon which the Commission relies relates to jails not prisons. Further the data is severely flawed.

[20] *Draft Order* ¶44.
[21] See *Draft Order* ¶¶49-51.

b. Data supporting a 2-cent facility fee does not apply to prisons and is otherwise fatally flawed.

The *Draft Order* does not justify imposition of the 2-cent facility additive on prison rates. The Commission relies upon the National Sheriffs Association (NSA) data—which as described below is extremely flawed—to impose the uniform rate additive on all facilities, even though, by its own terms, *the data is not related to costs in prisons*. The capriciousness of this decision is further underscored by the fact that most prisons in the country are already below the FCC's 2024 rate cap, and several others have moved to comply this year.[22] The facility fee is not needed at all but is most irrational when applied to prisons.

Regardless of its application to prisons, the data is flawed as to jails as well. As the Commission explains in the *Draft Order*,[23] it derived the 2-cent cost from a self-interested submission by the NSA that made no claims as to scientific validity or representativeness and did not make any showing or claim as to whether the costs met the Commission's prudent investment standard. The Commission has repeatedly expressed skepticism at the NSA data. For example, it concluded in 2021 that some facilities included in the NSA data reported excessively high hours spent on calling-related activities—totaling "more than 17 full-time 40-hour-a-week correctional facility personnel (or four full-time personnel working 24 hours a day every day)" for a single facility of 1,500 ADP.[24]

And even though the Commission further found the NSA data "suggest a troubling and apparent duplication of some of the same security functions claimed by providers in their costs,"[25] the Commission is now putting the facility fee on top of a rate cap which includes every single safety and security cost. Moreover, the Commission has increased its reliance on and the impact of this flawed and increasingly ancient data (now more than 10 years old) because the *Draft Order*'s methodology does not include the facility costs in an overall consideration of the zone of reasonableness, as it did in the *2024 Order*. Instead, it places the additive on top of a rate cap that supposedly addresses all used and useful costs and is now significantly higher than it was in the *2024 Order*.

4. The Commission is proposing to incorrectly impose the full, unproven burden of safety and security costs on families without justification and for an indefinite period.

The Commission's *Draft Order* incorporates all safety and security costs, totaling $346 million, fully into the rate by adding those costs to both the calculation for the minimum

[22] Worth Rises Releases Impact Analysis of the FCC's Proposed Revisions to Its 2024 Regulations on Incarcerated People's Communications Services and Rebukes the Revisions as Overly Broad and Misguided (Oct. 15, 2025), https://worthrises.org/pressreleases/2025/10/15/worth-rises-releases-impact-analysis-of-the-fccs-proposed-revisions.
[23] *Draft Order* ¶47.
[24] *Rates for Interstate Inmate Calling Services,* Third Report and Order at ¶143, 36 FCC Rcd 9519 (2021).
[25] *Id.*, ¶148.

and maximum in the zone of reasonableness.[26] The Commission justifies its action with respect to safety and security costs by stating the data is unreliable even though it previously concluded that the data was sufficient to make a determination.[27]

a. The Commission should direct the Bureau to issue a Mandatory Data Collection within 45 days of receiving comments in this docket.

The Commission indicates a desire for, and asks questions about, additional data on safety and security costs. Paying consumers are—as explained below—bearing, as an interim matter, the full costs of safety and security which are not used and useful and which do not belong in the rate. For this reason, the Commission should adopt a clear and explicit directive and a short time limit for the Bureau to issue another mandatory data collection on safety and security costs. The Commission should direct the Bureau to act with a final mandatory data collection within **at least 45 days** of the completion of the record in the *Further Notice*. The Commission should mandate submission of the data within 30 days after the data collection is issued and further commit to acting on permanent rates within 180 days of the release of the final order being voted on October 28th.

The Commission should make clear that it will not tolerate submission of data which is not certified, accurate, statistically representative and fully attested to under penalty of perjury. The Commission should not reward parties that submit insufficient and incomplete data. The parties' delay in explaining confusion or need for clarification is inexcusable. Parties that delay and dissemble should not be rewarded with additional unjustified funds.

b. The Commission's decision violates the statute and is arbitrary and capricious.

The Commission's about face with respect to safety and security costs with almost no change in the underlying factual record is arbitrary and capricious and a violation of the APA. It also arbitrarily and capriciously places the full burden on the consumers it was directed to protect and puts no burden of uncertainty on the providers or facilities.

The *Draft Order* recognizes that not all the safety and security costs that the Commission adds to the rate are justified. The Commission admits it needs "more and better information" because "*in some instances . . .certain* reported costs" were "used and useful."[28] The Commission does not claim that all the safety and security costs belong in the rate, only that facilities and providers were confused by the categories.[29] The Commission adopts an interim rate, but it adopts an interim rate that unjustifiably places all burdens on the paying consumer but not providers or facilities.

[26] *Draft Order* ¶¶29, 36.
[27] *Draft Order* ¶¶31-33.
[28] *Draft Order* ¶31 (emphasis added).
[29] *Draft Order* ¶¶31-32.

The Commission's decision violates the law. Section 276, as the Commission itself concluded, requires the Commission to set a rate that provides a just and reasonable rate to the consumer, requires fair compensation to the provider and requires the Commission to only "consider" safety and security costs.[30] The Commission's decision, therefore, directly violates the statute's plain language by elevating facilities' admittedly unproven and questionable claims about safety and security over the statutory mandate for just and reasonable costs and fair compensation.

The decision is also arbitrary and capricious because it is not only based on non-existent evidence that facilities will deprive incarcerated people of communications[31] but also because it concludes that consumers—the only people in this circumstance with no control and no choice—should bear the full brunt of the costs in light of uncertainty, instead of facilities and providers, both of which have full freedom and more resources to make adjustments for an interim period. There is no reason justified by law, regulation, or Commission policy to impose the full burden of questionable data on the paying consumer. The Commission burdens the most vulnerable without necessary justification.

Moreover, the Commission's decision is also arbitrary and capricious because it rewards those parties who made inaccurate data submissions by granting them the benefit of the doubt when those parties filed confusing and incomplete data and then sat on their hands during the pendency of the prior rulemaking as to the supposed flaws in the safety and security categories that the Commission now uses to justify its conclusions.

Especially in light of the admitted uncertainty about the legitimacy of placing all safety and security costs into the rate, the Commission should not place the full burden of those costs on families and their incarcerated loved ones.

5. Transparency and consumer protection is essential, and the Commission must move rapidly to implement them.

The Commission's *2024 Order* adopted important consumer protections. Specifically the *2024 Order* required every communications service provider to provide the following disclosures: 1) all policies and rates on their public websites, on any app or platform that consumers use, and on paper upon request, without any account or login needed to view the policies; 2) a personalized billing statement every month, and a paper copy upon request; 3) any ancillary charges and/or site commission fees until they stop charging these fees.[32] The Commission originally sought OMB approval for these requirements but apparently withdrew its request. Despite its easily feasible achievement, many providers are still not complying with this rule.[33]

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[30] 47 U.S.C. § 276.
[31] *Supra* pp. 1-2.
[32] 47 C.F.R. § 64.6110(a).
[33] *E.g.*, United Church of Christ Media Justice Ministry *et al.* Opposition to Talton Waiver and Redaction, WC Docket 23-62 at 203, nn.7-8 (filed April 10, 2025) (citing a number of Talton and GTL websites that do not disclose rate or policy information publicly).

The Commission should explicitly and specifically direct the Bureau to immediately seek any required approval to effectuate these obligations as quickly as possible.

6. It is arbitrary and capricious for the Commission to issue this Order but not rule on the Application for Review.

As acknowledged by the Commission,[34] some of the undersigned organizations sought review of the Bureau's *Suspension Order* and the Bureau sought comment on that *Application*. Action on the *Application* is necessary to clarify the boundaries of the Bureau's ability to act in this area and to affirm the Commission's conclusions on site commissions and fees. Paying consumers should not be at the mercy of the whim of staff decisions, which, as the *Application* explained, violated binding Commission rulings and federal law.

The Commission addressed some of the issues raised in the *Application*. For example, it determines that the site commissions and ancillary fee bans should be reinstated after the Bureau suspended them. However, the Commission does not state that the Bureau erred, or, in the alternative, that the Commission believes the temporary suspension was correct. Without directly addressing the *Application* despite addressing the issues raised in the *Application*, the Commission leaves open the possibility that some parties will interpret the Commission's decision as sanctioning the Bureau's unlawful *Suspension Order*, or, that the Bureau is free to summarily increase rates for paying consumers without notice or due process. The Commission should act on the Application for Review to the extent that it substantively addresses in the *Draft Order* the points raised in the *Application*.

Further, despite addressing a number of the substantive issues in the *Application*, the Commission's failure to act on the *Application* means that the Commission does not dismiss or grant the *Application*, even in part. As the Commission is well aware, action on the *Application* is necessary for parties to initiate review in federal court.[35] Given that the Commission has considered substantively a number of issues in its order, it is the height of arbitrary and capricious behavior for the Commission to fail to grant or deny the *Application*, at least as to the issues it will address if the *Draft Order* is adopted. For example, in the same manner the Commission grants the NCIC Petition in part, it could also add similar language to a new paragraph after paragraph 130 that would grant the *Application* in part and dismiss it in part as described therein. Because granting or rejecting the *Application* would require almost no additional analysis, the Commission's failure to act on the *Application*, it will be deliberately and arbitrarily denying Applicants due process.

[34] *Draft Order* ¶5.
[35] 47 CFR § 1.115(k).

7. The *Further Notice* should seek comment on the impact of the Commission's rules on jurisdictions that absorb the cost of calling.

The Commission should seek comment in the *Further Notice* as to how the Commission's rules should apply to wholesale rates or in other instances in which facilities pay for the cost of calling, such as in the five states and local jurisdictions that have adopted no-cost calling for incarcerated people.[36] For example, after paragraph 89 in the *Draft Order*, we encourage the Commission to add the following:

> Five states and some municipalities have enacted legislation providing for free communications services for incarcerated people. In those cases, the states and localities do not typically purchase communications on a per minute basis as do the individual consumers for other IPCS. For example, they may purchase service using metrics more typical of large enterprises. The Commission's rules protecting individual consumers should not inadvertently hamper these developments and should, if anything, ensure that such purchasers of communications continue to benefit from the Commission's rules and the goals of the Martha Wright Act. What changes, adjustments or other policies should the Commission consider in this regard? Are there other changes the Commission could adopt that would enable or encourage other states or localities to make similar changes? How should the Commission account for these models in which the ratepayer is not the individual consumer?

Moreover, we urge the Commission to review and revise the *Draft Order* to ensure definitions of "customer" and "consumer" are clear and account for these agency-paid models, in which there are no traditional ratepayers.

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[36] *See, e.g.*, Worth Rises Comments, WC Docket 12-375 at 11-12 and appendices (filed Nov. 23, 2020).

In conclusion and in light of the above, the undersigned request the Commission return to implementing the *2024 Order*, or in the alternative, adopt the reforms and changes to the proposed *Draft Order* as described here.

Sincerely,

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