

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

In the Matter of )  
 ) GN Docket No. 25-133  
Delete, Delete, Delete )

## Reply Comments of

**Electronic Privacy Information Center  
Benton Institute for Broadband and Society  
The Leadership Conference on Civil and Human Rights  
Public Knowledge  
United Church of Christ Media Justice Ministry, and  
Worth Rises**

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The undersigned public interest organizations (Public Interest Advocates)<sup>1</sup> respectfully submit these reply comments addressing the Public Notice in this docket issued on March 12, 2025.

## **I. Introduction**

As a preliminary matter, Public Interest Advocates note that the request for comments in this Public Notice<sup>2</sup> was not adopted by vote of the Federal Communications Commission (FCC or Commission), nor by staff under identified delegated authority; as such, it is not a Notice of Proposed Rulemaking. A Notice of Proposed Rulemaking is the necessary first step for changing the rules.<sup>3</sup>

Public Interest Advocates emphatically oppose the comments offered by Securus<sup>4</sup> and NCIC Correctional Services (NCIC)<sup>5</sup> in response to Chair Carr’s Public Notice. As recently as two weeks ago, the FCC and the United States (collectively, “the government,”) opposed the underlying points of those comments in a court filing.<sup>6</sup> Communications services for

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<sup>1</sup> The Electronic Privacy Information Center (EPIC), Public Knowledge, United Church of Christ Media Justice Ministry, and Worth Rises.

<sup>2</sup> FCC Public Notice, In Re: Delete, Delete, Delete, GN No. 25-133 (Mar. 12, 2025), <https://docs.fcc.gov/public/attachments/DA-25-219A1.pdf> [hereinafter FCC Public Notice].

<sup>3</sup> Other commenters have offered similar observations. *See, e.g.*, TechFreedom, Comment on FCC Public Notice, 3–19 (Apr. 11, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/104111580520766>.

<sup>4</sup> Securus Technologies, LLC, Comment on FCC Public Notice (Apr. 14, 2025) <https://www.fcc.gov/ecfs/search/search-filings/filing/104112389415303> [hereinafter “Securus Comment”].

<sup>5</sup> NCIC Correctional Services, Comment on FCC Public Notice (Apr. 14, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/10411934106941> [hereinafter “NCIC Comment”].

<sup>6</sup> *See generally* Brief for Respondents, MCP 191, No. 24-8028 (1st Cir. April 14, 2025), <https://docs.fcc.gov/public/attachments/DOC-410779A1.pdf> (defending FCC Rule at issue in Securus and NCIC comments as legal and appropriate) [hereinafter “FCC Br.”].

incarcerated persons is an industry that has been long and widely recognized as exploitative.<sup>7</sup> Congress spoke clearly when it enacted the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act),<sup>8</sup> directing the FCC to correct an archetypal market failure.<sup>9</sup> Against this backdrop, the consumer protection regulations implemented by the FCC's Rule<sup>10</sup> are essential. Post-*Loper Bright Enterprises v. Raimondo*,<sup>11</sup> any alleged deficiencies with this FCC Rule are best resolved first by the Court clarifying how the statute should be interpreted.<sup>12</sup> In this comment, we rebut Securus's and NCIC's claims that they represent the interests of incarcerated consumers and their families in seeking to roll back the FCC's Rule (Section II), and we explain why the FCC's Rule should not be eliminated or modified because it lawfully and appropriately effectuates Congress's directives in the Martha Wright-Reed Act (Section III).

## II. The Audacity of IPCS Providers Knows No Bounds

The shamelessness of incarcerated people's communications services (IPCS) providers—particularly Securus<sup>13</sup>—claiming that they represent the interests of incarcerated consumers and

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<sup>7</sup> See, e.g., Statement of Comm'r Rosenworcel, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking (July 18, 2024), <https://docs.fcc.gov/public/attachments/DOC-335984A4.pdf>; see also Section II, *infra*.

<sup>8</sup> Martha Wright-Reed Just and Reasonable Communications Act, Pub. L. 117-338, 136 Stat. 6156 (2023).

<sup>9</sup> FCC Br. At 7.

<sup>10</sup> *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, Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking (July 18, 2024), <https://docs.fcc.gov/public/attachments/FCC-24-75A3.pdf> [hereinafter *Martha Wright Act Implementation Order*].

<sup>11</sup> *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

<sup>12</sup> See generally FCC Br.

<sup>13</sup> See, e.g., EPIC, Comment on FCC Request for Comment on Securus Technologies, LLC's Petition for Waiver of the Inmate Calling Services Per-Minute Rate Requirement, WC No. 12-

their families is staggering. For decades, IPCS providers have collectively overcharged consumers hundreds of millions of dollars,<sup>14</sup> violated basic privacy<sup>15</sup> and sometimes even

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375, 86 Fed. Reg. 70427 (Jan. 7, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10108908616982>.

<sup>14</sup> See, e.g., Stephen Raheer, “A million here, a million there, and pretty soon you’re talking real money: Class-action settlement reveals Global Tel\*Link’s addiction to seizing customer money,” Prison Policy Initiative (Sept. 2022), <https://www.prisonpolicy.org/blog/2022/09/07/gtlsettlement/> (“[F]rom April 2011 through August 2019, GTL took over \$121 million from customer accounts that it declared inactive — this averages to over \$1.2 million a month. This isn’t money that GTL earned in return for providing a service, it’s simply money that GTL took because it could.” (emphasis removed)); Peter Wagner and Alexi Jones, “State of Phone Justice: Local jails, state prisons and private phone providers,” Prison Policy Initiative (Feb. 2019), [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html](https://www.prisonpolicy.org/phones/state_of_phone_justice.html) (noting in February 2019 that WesternUnion and Moneygram charge more than \$11 each to send \$25 to Securus, collected in part on behalf of the provider, even calling it a “revenue share” in some instances, in contravention of the FCC’s regulation).

<sup>15</sup> See, e.g., Doyle Remarks at Communications Privacy Hearing, House Committee on Energy and Commerce (Jul. 11, 2018), <https://energycommerce.house.gov/newsroom/press-releases/doyle-remarks-at-communications-privacy-hearing> (“At least one company, Securus, used their access to this data to create a service for tracking and locating nearly every cell phone in real time. On top of that Securus forced families calling prisons to consent to have their location tracked as a condition for talking on the phone with their incarcerated family member. That seems like no choice at all.”); Joseph Cox, “I Gave a Bounty Hunter \$300. Then He Located Our Phone,” Vice News (Jan. 8, 2019), <https://www.vice.com/en/article/nepxbz/i-gave-a-bounty-hunter-300-dollars-located-phone-microbilt-zumigo-tmobile> (“The investigation also shows that a wide variety of companies can access cell phone location data, and that the information trickles down from cell phone providers to a wide array of smaller players, who don’t necessarily have the correct safeguards in place to protect that data.”).

attorney-client privilege,<sup>16</sup> and collaborated to deny family members in-person visits<sup>17</sup> in order to pad their own pockets. In the same filing that they claim to represent consumer interests,<sup>18</sup> they argue for the Commission to get rid of the safeguards Congress directed the agency to implement to prevent the very exploitation these IPCS providers created and systematically maintained, safeguards such as proper inclusion of only used and useful security costs, including all costs in the per-minute rate obviating the need for frequently-abused ancillary fees, prohibitions on minimum deposits,<sup>19</sup> mandatory automatic refunds,<sup>20</sup> and meaningful disclosures of rates, including international rates.<sup>21</sup> Further, NCIC asks to excuse IPCS providers from USF

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<sup>16</sup> See, e.g., Jordan Smith & Micah Lee, “Not So Securus: Massive Hack of 70 Million Prisoner Phone Calls Indicates Violations of Attorney-Client Privilege,” *The Intercept* (Nov. 11, 2015), <https://theintercept.com/2015/11/11/securus-hack-prison-phone-company-exposes-thousands-of-calls-lawyers-and-clients/>; Dan Margolies, “Leavenworth Inmates Reach \$1.45 Million Settlement Over Taped Attorney-Client Phone Calls,” *NPR News* <https://www.kcur.org/news/2019-08-26/leavenworth-inmates-reach-1-45-million-settlement-over-taped-attorney-client-phone-calls> (Securus and the prison services provider Civic Core allegedly continued recording attorney-client calls even after a District Court ordered the prison to immediately halt the practice); Ella Fassler, “Prison Phone Companies Are Recording Attorney-Client Calls Across the US,” *Vice News* (Dec. 13, 2021), <https://www.vice.com/en/article/7kbbey/prison-phone-companies-are-recording-attorney-client-calls-across-the-us> (noting violations occurring in 2019, and linking to lawsuits against Securus for similar behavior in seven states).

<sup>17</sup> See, e.g., Hannah Kozlowska, “Prison communications company Securus will no longer require jails to ban in-person visits,” *Quartz* (May 9, 2015), <https://qz.com/400055/prison-communications-company-securus-will-no-longer-require-jails-to-ban-in-person-visits/> (Securus abandoning practice of requiring jails that use its video calling service ban in-person visits).

<sup>18</sup> See, e.g., Securus Comment at 40 <https://www.fcc.gov/ecfs/search/search-filings/filing/104112389415303> (“The Commission’s Delete docket offers an opportunity to rectify excessive regulations that do little, if anything, to further the interests of incarcerated persons.”).

<sup>19</sup> *Id.* at 15.

<sup>20</sup> *Id.* at 18–26.

<sup>21</sup> *Id.* at 27–35.

contributions, which the Commission rejected in 2020 when NCIC styled this same request as a forbearance petition and Securus sought a similar waiver.<sup>22</sup>

As noted above, the FCC and the United States addressed all of these issues comprehensively in Dockets 23-62 and 12-375, a matter currently being reviewed by the First Circuit. In that litigation, the government’s own brief, dated April 14, 2025,<sup>23</sup> defends the regulation-as-written, over the objections of facilities who “exploit their role in awarding monopoly contracts to providers,”<sup>24</sup> correctional officials to whom providers have offered campaign contributions, “payments to influential sheriff-led associations,” and ““among other inducements, ’ an annual Caribbean cruise”<sup>25</sup> (note: *annual*), and the providers themselves who “often exploit that [monopoly] economic position by charging rates and fees that greatly exceed the cost of providing calling services.”<sup>26</sup> And yet the consumers whose interests they shamelessly purport to represent may have to choose between “communication or rent, food, or school supplies.”<sup>27</sup>

The FCC saw through IPCS providers’ arguments when it adopted the Rule and again before the First Circuit. It should likewise reject Securus’s and NCIC’s self-serving objections in this docket.

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<sup>22</sup> NCIC at 3-4; Petition of Network Communications International Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) from Application of Contribution Obligations on Inmate Calling Services, Securus Technologies, LLC Request for Waiver of Section 54.706 of the Commission’s Rules, WB Docket No. 19-232, FCC 20-104, Order, 35 FCC Rcd 8348 (2020).

<sup>23</sup> FCC Br.

<sup>24</sup> *Id.* at 1.

<sup>25</sup> *Id.* at 64–65.

<sup>26</sup> *Id.* at 1.

<sup>27</sup> *Id.* at 7.

### III. The FCC’s Rule Advanced Congress’s Directives to Redress Historic Issues with Exploitation and Gamesmanship in the IPCS Industry

As a matter of statutory interpretation, the Commission and the United States recently argued persuasively as to why its Rule was legal and appropriate. The agency’s brief described its historic role in rate regulation,<sup>28</sup> contextualized this against the factual backdrop of the dysfunctional IPCS market,<sup>29</sup> addressed the authorities Congress clearly granted to the agency through the Martha Wright-Reed Act which abrogated the DC Circuit’s 2015 *Global Tel\*Link* decision and the plain text of the statute,<sup>30</sup> and persuasively described its reasoned decision-making in light of the factual record.

The government explained its decision determining which safety and security costs met the regulatory standard: “under the used-and-useful framework, the Commission concluded that allowing recovery through rates of ‘the costs of measures . . . not used and useful in the provision of IPCS . . . would be inconsistent’ with its mandate to ‘ensure just and reasonable . . . rates for incarcerated people and their loved ones.’ . . . The cost of services for law enforcement, the Commission explained, ‘would more appropriately be paid for directly by [correctional facilities].’”<sup>31</sup> The FCC explained its new, expansive data demonstrated, for the first time, that services labelled safety and security were often “nice-to-haves” that often varied from

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<sup>28</sup> *Id.* at 2, ; *id.* at 37 (FCC’s experience in rate-setting); *id.* at 38–39 (noting Congress’s choices to use of language from 201(b) and amend 276); *id.* at 42 (noting IPCS arguments would effectively eliminate FCC’s role in rate-making); *id.* at 68 (noting FCC’s 201(b) authority entails practices not merely charges).

<sup>29</sup> *Id.* at 1.

<sup>30</sup> *Id.* at 12 (redlines of language of statute’s text); *id.* at 32 (striking “per call” provisions from language of statute); *id.* at 49 (expressly allowing the agency to rely on industry averages in calculating costs); *id.* at 51 (“just and reasonable” language was added to protect consumers not providers); *id.* at 78 (noting that Congress providing “the explicit preemptive authority that the court in *Global Tel\*Link* had found the Commission to lack”).

<sup>31</sup> FCC Br. at 17-18 (quoting *Martha Wright Act Implementation Order* at ¶¶ 390, 346, 374).

jurisdiction to jurisdiction, therefore were not “necessary” from a communications regulation perspective, and therefore must be excluded from the rate to meet Congress’ directive.<sup>32</sup> The District of Columbia and ten states filed in the First Circuit supporting the FCC’s ruling, explaining how it supports safer facilities and safer communities<sup>33</sup>—a far cry from Securus’ unsubstantiated claim of “havoc.”<sup>34</sup> Even in the National Sheriff’s Association request for administrative stay, the Sheriffs did not claim “havoc,” it predicted reduced access to calling (which has occurred in one notorious jail<sup>35</sup> even though all jails should be in compliance as of April 1, 2025), but did not claim any harm to public safety.<sup>36</sup> The government also explained that, based on “extensive record evidence,” the FCC had concluded that site commissions are “fundamentally incompatible” with the demands of Congress as articulated through the Martha Wright-Reed Act.<sup>37</sup> The agency additionally noted that in any “exceptional” instance, the

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<sup>32</sup> *Id.* at 50-59;

<sup>33</sup> Brief of Amicus Curiae District of Columbia *et al.*, MCP 191, No. 24-8028 (1<sup>st</sup> Cir. April 21, 2025).

<sup>34</sup> Securus Comments at 2.

<sup>35</sup> Matt Campbell, *Baxter County Jail to end phone access for inmates, blames FCC rule*, Arkansas Times (Mar. 6, 2025) (describing Baxter County commissions of 52 percent) , <https://arktimes.com/arkansas-blog/2025/03/06/baxter-county-jail-to-end-phone-access-for-inmates-blames-fcc-rule>; Dale Ellis, *Federal judge rules Baxter County jail’s postcard-only mail policy is unconstitutional*, Northwest Arkansas Democrat Gazette (Apr. 9, 2023), <https://www.nwaonline.com/news/2023/apr/09/federal-judge-rules-baxter-county-jails-postcard/>; Chris Fulton, *Appeals Court upholds \$259,350 fee award against Baxter County Jail for mail policy that ‘changed on a whim,’* Mountain Home Observer (Apr. 8, 2025), <https://mhobserver.com/appeals-court-upholds-259350-fee-award-against-baxter-county-jail-for-mail-policy-that-changed-on-a-whim/> (U.S. Court of Appeals for the 8th Circuit upholds lower court ruling and awards attorneys’ fees for violations of incarcerated people’s civil rights when Baxter Country failed to clear “a low bar” of providing a rational basis for its policy).

<sup>36</sup> National Sheriffs’ Association, Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62 and 12-375 at 10-13 (filed Oct. 16, 2024), <https://www.fcc.gov/ecfs/document/10161484930123/1>.

<sup>37</sup> *Id.* at 45 (providers may not implement services for free as a condition of providing IPCS); *id.* at 64–65 (noting Pay Tel documenting a request for proposal in which it was ranked highest in each scoring category except for site commissions, but still lost the bid); *id.* at 67; *id.* at 82



provider may seek a waiver.<sup>38</sup> The waiver process is more than sufficient and needs no revision as requested by commenters.

The FCC and United States also articulated—in terms of well-documented problems in the record—why the Commission prohibited separate ancillary service charges, such as providers charging multiple fees for the same transaction and rent-seeking behavior,<sup>39</sup> and noting that despite attempts by the agency to target this behavior through previous rules “providers were still motivated to exploit every available opportunity to continue deriving unreasonable profits from such fees.”<sup>40</sup> In describing its allowance for alternative pricing models, the Commission was explicit about the safeguards necessary to ensure these alternatives did not themselves serve as a circumvention of the rate caps, safeguards such as making the plans cancelable at will and no longer than one month in duration.<sup>41</sup> These safeguards also included essential disclosures to consumers about how much usage of an alternative plan would be required for consumers to achieve a “breakeven” point.<sup>42</sup> Regarding disclosures such as these specifically,<sup>43</sup> the government argued that the FCC did “not simply trust providers and hope for the best” but that it

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(noting that even under the *Global Tel\*Link* order, the FCC was directed to determine “which portions of site commissions might be directly related to the provision of I[P]CS and therefore legitimate, and which are not”).

<sup>38</sup> FCC Br. at 16, 48. This addresses Securus’s concerns about facility-specific waivers. *See* Securus Comment at 37–39.

<sup>39</sup> *Id.* at 24 (noting that such charges “have been a continuous source of confusion and gamesmanship,” “significantly increasing the costs of IPCS” by as much as 40 percent, and further noting that ancillary service charges can serve as a “loophole” to rate caps (internal citations omitted)); *id.* at 35 (guarding against practices that circumvent rate caps); *id.* at 89–91 (same); *id.* at 91 n.21 (noting that companies generally do not charge for helpline services separately).

<sup>40</sup> *Id.* at 92 (internal quotation marks omitted).

<sup>41</sup> *Id.* at 96–99.

<sup>42</sup> *Id.* at 97.

<sup>43</sup> Securus Comment at 23–33.

“added considerable detail about what providers must now disclose and where they must disclose it.”<sup>44</sup>

Securus’ concern about automatic refunds not only heartlessly ignores the tremendous fraud perpetrated by IPCS providers upon incarcerated people and their families but also is—like most proposals in this docket—inappropriate procedurally since the decision is now final and in the midst of an appeal. Regardless, the Commission cannot and should not take any action without legally sufficient notice and significant new fact-finding on a new record.

Continuing data collection is necessary to ensure the Commission’s rates continue to reflect the realities of consumers and of providers, as well as to monitor compliance with its rules and staged implementation and to identify trends within the industry.<sup>45</sup> And as to the concern about a lack of enforcement actions,<sup>46</sup> just because the FCC hasn’t taken enforcement action yet does not mean that the data collection is not helpful to current or future investigations.

#### **IV. Conclusion**

As then-Commissioner Carr himself has noted:

The excessive rates Martha Wright-Reed sought to reform flowed from a market failure. The market for inmate calling services does not benefit from the same type of competitive forces that we see in other segments of the telecom ecosystem. As a result, the FCC has had a critical role to play in regulating certain aspects of this marketplace, and it has taken actions to address providers’ practices over the years. A big part of enabling this is ensuring that IPCS providers are limited to charging just and reasonable rates for inmate calling services.<sup>47</sup>

Securus and NCIC offer no sound reason the FCC should abandon the well-reasoned position it has taken—including as recently as two weeks ago—as to its IPCS Rule. We respectfully urge

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<sup>44</sup> FCC Br. at 100.

<sup>45</sup> *Contra* NCIC Comment at 6.

<sup>46</sup> *See, e.g.*, NCIC Comment at 7.

<sup>47</sup> Statement of Comm’r Carr, *Martha Wright Act Implementation Order*.

the Commission to reject these ill-founded requests to eliminate or modify the Rule.

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