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July 12, 2023

The Honorable Jessica Rosenworcel
Chair
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: In the Matter of Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act, WC Docket 23-62; Rates for Interstate Inmate Calling Service, WC Docket 12-375

Dear Chair Rosenworcel:

On behalf of The Leadership Conference on Civil and Human Rights and its Media/Telecommunications Task Force, we write in response to the Notice of Proposed Rulemaking implementing the Martha Wright-Reed Act.¹

The Leadership Conference is a coalition charged by its diverse membership of more than 250 national organizations to promote and protect the rights of all persons in the United States, and its Media/Telecommunications Task Force is committed to ensuring that all communities, especially the historically underserved, have access to affordable, reliable, and high-quality advanced communications services.

We commend the Federal Communications Commission (FCC or commission) for moving quickly to implement the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act). The barrier between incarcerated people and their loved ones created by sky-high prison phone rates makes it more difficult for incarcerated people to succeed when they return home and places a significant financial burden on their families, while disproportionately impacting communities of color.²

¹ See *In re Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act*, WC Docket Nos. 23-62, 12-375, FCC 23-19 (rel. Mar. 17, 2023) (NPRM).

² *Reply Comments of The Leadership Conference on Civil and Human Rights, American Association of People with Disabilities, Asian Americans Advance Justice - AAJC, Common Cause, Communications Workers of America, Japanese American Citizens League, National Consumer Law Center, National Disability Rights Network, and Southern Poverty Law Center Action Fund*, WC Docket No. 12-375 (2023)(Leadership Conference Comments); *Comments of Color of Change*, WC Docket Nos. 23-62, 12-375 (2023)(Color of Change Comments).

The recommendations made by the commenters in the record, and those made here, provide a roadmap for the commission to efficiently and justly implement the Martha Wright-Reed Act. In these comments, The Leadership Conference and undersigned organizations:

- Endorse the view in the record for the proceeding, and in the legislative record for the Martha Wright-Reed Act, that Congress' passage of the legislation should be viewed by the FCC as a wholesale rejection of the D.C. Circuit's *Global Tel*Link v. FCC* ruling (*GTL*).³ The *GTL* decision severely impacted the FCC's ability to address predatory intrastate prison phone rates, undid years of work by advocates, and opened the door for ICS providers to increase rates.⁴ Congress, understanding the impact that these fees have on incarcerated people and their families, passed the Martha Wright-Reed Act to address this problem. As one commenter illustrated in a compelling chart, the Martha Wright-Reed Act adopts the reasoning of the dissent in *GTL* to clarify that the FCC has jurisdiction to address unjust and unreasonable intrastate rates.⁵
- Support the commission's proposal to interpret the "just and reasonable" language in Section 276(b)(1)(A), as modified by the Martha Wright-Reed Act, to have the same meaning as in Section 201(b).⁶ The commission's interpretation is supported by other public interest commenters,⁷ who emphasize that the proposed interpretation is the most sound because "identical words and phrases within the same statute should normally be given the same meaning," and that Congress considered the commission's history of interpreting statutes in this manner when Congress passed the Martha Wright-Reed Act.⁸
- Support the claim made by United Church of Christ Media Justice Ministry and Public Knowledge in the record that Congress directed the commission to preempt state and local law to achieve just and reasonable rates.⁹ The case for preemption is clear. The Martha Wright-Reed Act provides that the law shall not be construed to "require telephone service or advanced communications services at a State or local prison, jail, or detention facility or prohibit the implementation of any safety and security measures related to such services at such facilities."¹⁰ Congress made clear, through the exclusion of explicit language, that no additional state or local

³ *Global Tel*Link v. FCC*, 866 F.3d 397 (D.C. Cir. 2017)(*GTL v. FCC*); Comments of Stephen A. Raher, WC Docket Nos. 23-62, 12-375 (2023)(Stephen Raher Comments); Comments of United Church of Christ Media Justice Ministry and Public Knowledge, WC Docket Nos. 23-62, 12-375 (2023) (UCC and PK Comments); Comments of The Wright Petitioners, Benton Institute for Broadband and Society, Prison Policy Initiative, and Public Knowledge, WC Docket Nos. 23-62, 12-375 (2023)(Wright Petitioners Comments).

⁴ Victoria Law, "\$15 for 15 Minutes: How Courts are Letting Prison Phone Companies Gouge Incarcerated People," The Intercept (June 16, 2017), <https://theintercept.com/2017/06/16/fcc-prison-phone-call-rates-court-deregulate-trump/>.

⁵ Stephen Raher Comments at 3 (2023).

⁶ See NPRM at para. 18.

⁷ Wright Petitioners Comments at 9; Stephen Raher Comments at 7.

⁸ *Id.*

⁹ UCC and PK Comments at 19-23.

¹⁰ Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (Martha Wright-Reed Act or the Act); 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d).

authority is preserved.¹¹ This interpretation is consistent with Section 276, which states that “to the extent that any State requirements are inconsistent with the commission’s regulations, the commission’s regulations on such matters shall preempt such State requirements.”¹² Regarding preemption of state imposed rates in particular, we support the view of other commenters that such preemption is only of those state-imposed rates that are higher than the rate the commission establishes, as a lower rate is consistent with the commission’s regulations.

- Encourage the commission to conclude that the Martha Wright-Reed Act’s direction to “consider the costs of safety and security measures” requires the commission to comply with the Administrative Procedure Act to consider the matter, but does not require the commission to pass those costs on to consumers. Our previous comments, in response to the Fourth Report and Order (Fourth R&O) and Sixth Further Notice of Proposed Rulemaking (Sixth FNPRM) regarding interstate inmate calling services (ICS), urged the commission to determine that incarcerated people and their loved ones should not be forced to subsidize services they do not want or are the responsibility of the incarcerating institution.¹³ The inclusion of additional fees can dramatically increase the cost of a phone call with a loved one,¹⁴ while providing jails and prisons cover for additional surveillance. Many of the measures these fees cover actually heighten the depression, isolation, and loneliness experienced by incarcerated people — actively harming them instead of providing any discernible benefit.¹⁵ Services such as security and surveillance are the function of the carceral institution. They are not recoverable through interstate rates under section 201(b) of the Communications Act,¹⁶ and they should not be recoverable under the “necessary” standard laid out in the Martha Wright-Reed Act.¹⁷
- Urge the commission to use its expanded authority to continue to address the other various junk fees associated with ICS. The National Consumer Law Center, in comments to the Federal Trade Commission regarding junk fees outside the context of communications services, drew upon the FCC’s extensive work to address the price of communications services for incarcerated people and highlighted the expanded authority given to the commission by the Martha Wright-Reed

¹¹ *Comments of United Church of Christ Media Justice Ministry and Public Knowledge*, WC Docket Nos. 23-62, 12-375 at 19-23 (2023).

¹² 47 U.S.C. § 276(c).

¹³ *Reply Comments of The Leadership Conference on Civil and Human Rights, American Association of People with Disabilities, Asian Americans Advance Justice - AAJC, Common Cause, Communications Workers of America, Japanese American Citizens League, National Consumer Law Center, National Disability Rights Network, and Southern Poverty Law Center Action Fund*, WC Docket No. 12-375 (2023)(Leadership Conference Comments)

¹⁴ Drew Kukorowski, Peter Wagner, and Leah Sakala, *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry*, Prison Policy Initiative (2013), <https://www.prisonpolicy.org/phones/pleasedeposit.html>.

¹⁵ Katie Rose Quandt and Alexi Jones, “Research Roundup: Incarceration Can Cause Lasting Damage to Mental Health,” Prison Policy Initiative (May 13, 2021), <https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/>.

¹⁶ *Comments of Worth Rises*, WC Docket 12-375 (2022); *See also* United Church of Christ Media Justice Ministry and Public Knowledge, *Petition for Reconsideration*, WC Docket 12-375 (2022).

¹⁷ Martha Wright-Reed Act, 153(1)(E), 276(b)(1)(A), (d).



Act.¹⁸ The work done by the commission on this issue serves as a model for other agencies within the federal government,¹⁹ so the FCC should continue to protect consumers from unjust add-on fees in this proceeding.

- Finally, we support the recommendation made by the American Civil Liberties Union, in response to the Fourth R&O and Sixth FNPRM regarding interstate inmate calling services, that the commission amend the definition of “jail” to include detention facilities operated directly by or pursuant to a contract with Customs and Border Protection (CBP) and the U.S. Marshals Service (USMS).²⁰ As the commission begins implementation of the Martha Wright-Reed Act, it is crucial that the commission address this issue and ensure every individual at a facility where they can be incarcerated or detained has the opportunity to communicate with their loved ones without being subject to price gouging by ICS providers.

We sincerely appreciate the commission’s movement to address these issues over the last two years, and reiterate our request that the commission put out clear, easily understood consumer materials for both its ruling lowering interstate and international prison phone rates in 2021 and its ruling mandating Telecommunications Relay Services (TRS) access for people with disabilities in 2022.²¹ Without clear materials in multiple languages, the consumers the FCC is trying to help will not learn of these protections and will not be able to invoke the assistance of the FCC if the providers they are required to use over-charge them or charge impermissible fees or impermissible rates.

Thank you for your consideration on this important issue. We look forward to working with you on this issue and others of importance to our country. If you have any questions about this letter, please contact Media/Telecommunications Task Force Co-Chair Cheryl Leanza, United Church of Christ Media Justice Ministry, at cleanza@alhmail.com, or Jonathan Walter, media/tech policy counsel at The Leadership Conference, at walter@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
Advancement Project
American Civil Liberties Union
American Humanist Association
Asian Americans Advancing Justice – AAJC

¹⁸ *Comments of National Consumer Law Center*, Fed. Trade Comm’n, ANPR, 87 Fed. Reg. 67412 (2023).

¹⁹ *Id.*

²⁰ *Comments of the American Civil Liberties Union*, WC Docket 12-375 (2023).

²¹ Press Release, Federal Communications Commission, FCC Lowers Interstate and International Prison Phone Rates to Help Families Stay Connected (May 20, 2021), <https://www.fcc.gov/document/fcc-lowers-interstate-and-international-prison-phone-rates>; Press Release, Federal Communications Commission, FCC Acts to Ensure Access to Communications Services for Incarcerated People with Disabilities (Sept. 29, 2022), <https://www.fcc.gov/document/fcc-mandates-trs-access-incarcerated-people-disabilities>.

Bend the Arc: Jewish Action
Benton Institute for Broadband & Society
Color of Change
Communications Workers of America
Justice Strategies
Latino Farmers & Ranchers International, Inc.
Lawyers' Committee for Civil Rights Under Law
MediaJustice
National Association of Criminal Defense Lawyers
National Consumer Law Center (on behalf of its low-income clients)
National Hispanic Media Coalition
Oklahoma Black Historical Research Project, Inc.
Operation Spring Plant, Inc.
Prison Policy Initiative
Rural Coalition
United Church of Christ Media Justice Ministry